

ORDINANCE NO. 2015-37

ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO PROGRESSIVE WASTE SOLUTIONS OF FL., INC., A FLORIDA CORPORATION, FOR THE COLLECTION OF RESIDENTIAL MUNICIPAL SOLID WASTE, AS THE COMPANY WITH THE HIGHEST RANKED BEST OVERALL PROPOSAL PURSUANT TO REQUEST FOR PROPOSAL NO. 2014-15-9500-00-002, FOR A TERM BEGINNING UPON EXECUTION OF THE EXCLUSIVE FRANCHISE AGREEMENT BY THE PARTIES AND ENDING ON SEPTEMBER 30, 2019, WITH AN AUTOMATIC RENEWAL TERM THEREAFTER OF FIVE YEARS, BEGINNING ON OCTOBER 1, 2019 AND ENDING ON SEPTEMBER 30, 2023, AND SUBSEQUENT RENEWALS AT THE OPTION OF THE PARTIES, FOR A TERM OF ONE YEAR EACH, WITH A CUMULATIVE DURATION OF ALL SUBSEQUENT RENEWALS AFTER THE FIRST RENEWAL TERM NOT EXCEEDING A TOTAL OF FIVE YEARS; APPROVING THE TERMS OF THE EXCLUSIVE FRANCHISE IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO EXECUTE THE EXCLUSIVE FRANCHISE AGREEMENT; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City issued a request for proposals ("RFP") for certain types of Solid Waste Collection Services; and

WHEREAS, Progressive Waste Solutions of FL, Inc. ("Progressive Waste") submitted a proposal in response to the City's RFP (RFP No. 2014-15-9500-00-002); and

WHEREAS, the City has relied upon the proposal and other information provided by Progressive Waste concerning its experience and ability to provide collection services to the City; and

WHEREAS, after evaluating all of the proposals that were submitted in response to the City's RFP, the City Council finds that Progressive Waste has submitted the best proposal; and

WHEREAS, the City Council finds that granting an exclusive franchise to Progressive Waste, subject to the terms and conditions contained in the Exclusive Franchise Agreement, is in the public interest and will protect the public health, safety and welfare; and

WHEREAS, the City Council finds that the franchise granted herein properly balances the City's desire to provide excellent, environmentally-sound collection services to the City's residents and the City's desire to minimize the cost of such services.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby grants an exclusive franchise to Progressive Waste Solutions of FL., Inc., a Florida corporation, for the collection of residential municipal solid waste, as the company with the highest ranked best overall proposal pursuant to RFP No. 2014-15-9500-00-002, for a term beginning upon the execution of the Exclusive Franchise Agreement by the Parties and ending on September 30, 2019, with an automatic renewal term thereafter of five years, beginning on October 1, 2019 and ending on September 30, 2023, and subsequent renewals at the option of the

parties, for a term of one year each, with a cumulative duration of all subsequent renewals, after the first renewal term, not exceeding a total of five years.

Section 3: The City Council hereby approves the terms of the exclusive franchise in substantial conformity with the Exclusive Franchise Agreement attached hereto and made a part hereof as "Exhibit 1" and hereby authorizes the Mayor and the City Clerk, as attesting witness, to sign the Exclusive Franchise Agreement on behalf of the City.

Section 4: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.


Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

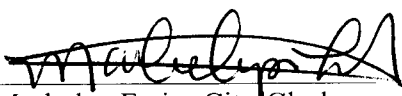
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

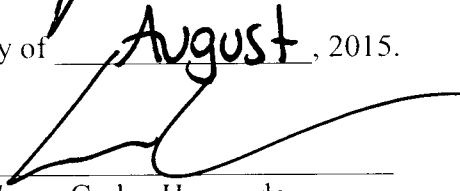
PASSED and ADOPTED this 11 day of August, 2015.


Isis Garcia Martinez
Council President

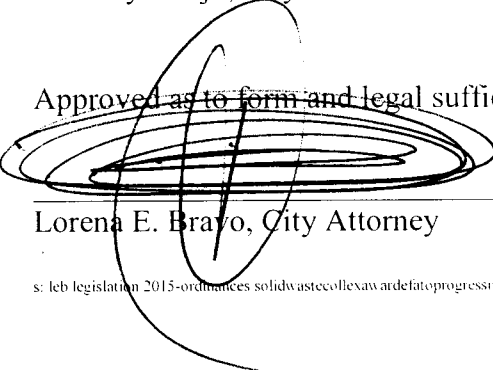
Attest:

Approved on this 19 day of August, 2015.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

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Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.

Solid Waste Exclusive Franchise Agreement with Progressive Waste Solutions of Florida, Inc. – Key Dates

Deadline	Summary	Relevant Section(s)
5 days before Effective Date	The Contractor shall furnish the Performance Bond to the City	§ 53
5 days before Effective Date	The corporate guaranty shall be delivered to the City	§ 54
September 1, 2015	The Contractor shall provide its Transition Plan to the Director	§ 6.2
September 1, 2015	Contractor shall provide the Director with purchase orders and other related documentation demonstrating that all necessary Collection vehicles and equipment have been ordered and will be delivered to the City's Equipment Yard or the Contractor's equipment yard in Miami-Dade County no later than October 15, 2015	§ 6.2(a)
September 15, 2015	Contractor shall provide the Director with an electronic copy of the notices, brochures, and informational materials the Contractor intends to deliver to Customers	§ 6.2(b)
October 1, 2015	Contractor shall provide the Director with a Collection Plan pursuant to Section 23	§ 6.2(c)/23
October 1, 2015	Contractor shall provide the Director with a written Safety Plan and a Contingency Plan pursuant to section 22 and 37.4, respectively.	§ 6.2(d) § 22 § 37.4
October 8, 2015	Contractor and City shall meet and discuss the Contractor's Transition Plan	§ 6.2(e)
October 16, 2015	Contractor shall deliver notices, brochures, and informational materials to all Customers concerning Contractor's Collection Services	§ 6.2(f)
October 19, 2015	Contractor shall confirm in writing to the Director that all of the vehicles and equipment necessary to provide Residential Collection Service have been delivered to the City's Equipment Yard or to the Contractor's equipment yard in Miami-Dade County	§ 6.2(g)
October 19, 2015	Contractor shall confirm in writing to Director that all of the vehicles necessary to provide Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the Agreement	§ 6.2(h)
October 28, 2015	Contractor and the Director shall meet and discuss the status of Contractor's Transition Plan and its implementation.	§ 6.2(i)

October 28, 2015	Contractor shall provide the Director with a vehicle list	§ 6.2(j)
October 29, 2015	Contractor shall confirm in writing to the Director that: (1) the Contractor has delivered the City-approved notices, brochures, and informational materials to all of the Customers; (2) Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in this Agreement; and (3) all of the Contractor's drivers have inspected their Collection routes and confirmed their ability to complete their routes on the Scheduled Collection Days.	§ 6.2(k)
October 30, 2015	Sale of the City vehicles to the Contractor	§ 28.11
At least seven days before November 1, 2015	The Contractor shall design, print, and deliver a notice to each Customer concerning the Contractor's Collection Service and schedules	§ 6.3(j) § 35
November 1, 2015	Commencement Date	§ 1.17
November 1, 2015	The Contractor may occupy the Equipment Yard	§ 25.1
No later than November 20, 2015	Administrative Costs - First monthly payment (administrative fee) shall be delivered to the City	§ 40.1
No later than November 20, 2015	Code Enforcement - First of the Code Enforcement payments shall be delivered to the City	§ 40.2
No later than November 20, 2015	Preparation of Agreement - Contractor shall reimburse the City for its costs and efforts by making a one time, lump sum payment of Two Hundred Fifty Thousand Dollars (\$250,000)	§ 40.3
No later than November 20, 2015	Operational Support - Contractor shall make a lump sum payment to the City in the amount of Five Hundred Thousand Dollars (\$500,000)	§ 40.4
December 1, 2015	The Contractor shall provide a new Transition Plan to the Director	§ 6.3
December 1, 2015	Contractor shall provide the Director with a plan for the assembly and distribution of the Garbage Carts that will be provided to the Customers	§ 6.3(d)
December 1, 2015	Contractor shall provide the Director with an electronic copy of the notices, brochures, and informational materials the Contractor intends to deliver to Customers	§ 6.3(f)
December 15, 2015	Director and the Contractor shall meet and discuss the Contractor's plan for the assembly and distribution of the Garbage	§ 6.3(e)

	Carts	
January 4, 2016	Contractor shall provide the Director with a new Collection Plan	§ 6.3(a)
January 13, 2016	Contractor and City shall meet and discuss the Contractor's Transition Plan	§ 6.3(b)
January 13, 2016	Contractor shall provide the Director with purchase orders or other documentation demonstrating that all necessary Collection vehicles, equipment, and Garbage Carts have been ordered and will be delivered to the Contractor's equipment yard or the City's Equipment Yard	§ 6.3(c)
January 15, 2016	First quarterly report shall be delivered to the Director	§ 34.3.1
February 15, 2016	Contractor shall confirm in writing to the Director that all of the vehicles, equipment, and Garbage Carts necessary to provide Automated Collection Service with Garbage Carts	§ 6.3(g)
February 22, 2016	Contractor shall confirm in writing to the Director that all of the vehicles necessary to provide Automated Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the requirements of this Agreement.	§ 6.3(h)
February 22, 2016	Contractor shall provide the Director with a vehicle list	§ 6.3(i)
March 16, 2016	Contractor shall confirm in writing to the Director that: (1) the Contractor has delivered the City-approved notices, brochures, and informational materials to all of the Customers; (2) Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in this Agreement; and (3) all of the Contractor's drivers have inspected their Collection routes and confirmed their ability to complete their routes on the Scheduled Collection Days.	§ 6.3(k)
March 21, 2016	Contractor shall deliver notices, brochures, and informational materials concerning Contractor's Automated Collection Service to Customers	§ 6.3(j) § 35.2
March 23, 2016	Contractor shall confirm in writing to the Director that it has delivered all of the Garbage Carts needed to provide Collection Service in compliance with this Agreement.	§ 6.3(l)
Before March 28, 2016	Contractor shall purchase, assemble, and deliver one new Garbage Cart to each	§ 27.1.2

	Customer that is entitled to receive Automated Collection Service.	
March 28, 2016	Automation Date	§ 1.5
November 16, 2016	Contractor shall submit an annual report to the Director	§ 34.4
No later than November 20, 2016	Operational Support - Contractor shall make a second lump sum payment in the amount of Five Hundred Thousand Dollars (\$500,000)	§ 40.4
October 21, 2015	Contractor shall provide City a Certificate of Insurance evidencing that all coverages, limits, and endorsements required herein are maintained and in full force and effect	§ 52.8
October 15, 2016	The Contractor shall give the Director a written description of the donations the Contractor made in the prior Operating Year – Additional Benefits	§ 77
January, 2017	The Contractor shall design, print, and deliver an annual notice to all Customers within the Service Area	§ 35.3

EXCLUSIVE FRANCHISE AGREEMENT

This Exclusive Franchise Agreement ("Agreement") is made and entered into this _____ day of _____, 2015 ("Effective Date") by and between the City of Hialeah, Florida ("City"), a municipal corporation organized and existing under the laws of the State of Florida, and Progressive Waste Solutions of FLXYZ Company, Inc. ("Contractor"), a Delaware _____ corporation, which is authorized to do business in the State of Florida.

RECITALS

WHEREAS, the City issued a request for proposals ("RFP") for certain types of Solid Waste Collection Services; and

WHEREAS, the Contractor submitted a proposal in response to the City's RFP (RFP No. 2014-15-9500-00-002); and

WHEREAS, the City has relied upon the proposal and other information provided by the Contractor concerning the Contractor's experience and ability to provide Collection Services to the City; and

WHEREAS, after evaluating all of the proposals that were submitted in response to the City's RFP, the City Council ("Council") finds that the Contractor has submitted the best proposal; and

WHEREAS, the City wishes to use and the Contractor wishes to provide the Contractor's services for the Collection of Solid Waste, subject to the terms and conditions contained in this Agreement; and

WHEREAS, the Council finds that granting an exclusive franchise to the Contractor, subject to the terms and conditions contained in this Agreement, is in the public interest and will protect the public health, safety and welfare; and

WHEREAS, the Council finds that the franchise granted herein properly balances the Council's desire to provide excellent, environmentally-sound Collection Services to the City's residents and the Council's desire to minimize the cost of such services.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and the mutual benefits provided hereunder, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor agree that they shall be bound by and shall strictly comply with the following provisions of this Agreement:

SECTION 1: DEFINITIONS

The definitions contained in this Section 1 shall be used when interpreting this Agreement. If a word or phrase is not defined in this Agreement, the definition of such word or phrase in the City's Ordinances shall apply. To the extent the definitions contained herein conflict with similar definitions in any federal, state or local law, including but not limited to the definitions in the Ordinances, the definitions herein shall prevail when construing this Agreement.

1.1 **Advertising** means any written communication for the purpose of promoting a product or service. The Contractor's name and telephone number, and other information provided in the manner specified in this Agreement, is not Advertising.

1.2 **Agreement** means this Exclusive Franchise Agreement between the City and the Contractor.

1.3 **Applicable Law** means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental body during the term of this Agreement, and relate in any manner to the performance of the City or Contractor under this Agreement.

1.4 **Automated Collection Service** means the Collection of Garbage and Rubbish in a Garbage Cart using automated or semi-automated equipment.

1.5 **Automation Date** means February 1 March 28, 2016.

1.6 **Biomedical Waste** means any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; discarded sharps; and absorbent materials saturated with blood or body fluids.

1.7 **Bulky Waste** means White Goods, furniture, fixtures, sinks, toilets, ladders, carpet, and other large items that are discarded by a Customer on their Residential Property as a result of normal housekeeping activities, and cannot be placed in a Garbage Can or Garbage Cart because of the item's size, shape or weight.

1.8 **Bulky Yard Waste** means palm fronds, tree limbs, and other pieces of Yard Waste that are too big or heavy to fit in a Garbage Can or Garbage Cart. However, Bulky Yard Waste does not include Land Clearing Debris.

1.9 **Certificate of Occupancy** means a document issued by the City Building Department certifying that a newly constructed or renovated building complies with City specifications and is suitable for use.

1.10 **Change in Law** means the adoption, promulgation, or modification of any Applicable Law after the Effective Date, which directly and substantially affects the Contractor's or City's cost or ability to perform under this Agreement. A Change in Law does not include a change in any tax law or workers' compensation law.

1.11 **City** means, depending on the context, either (a) the geographic area contained within the boundaries of the incorporated City or (b) the government of the City, acting through the Council or its designees.

1.12 **City Indemnified Party** means the City, the Mayor, the Council and each of its members, and every agent, officer, official, servant, and employee of the City.

1.13 **Collection** means the process of picking up Solid Waste where it is Set Out, and then transporting and delivering the Solid Waste to a Solid Waste Management Facility.

1.14 **Collection Container** means Garbage Cans, Garbage Carts, Recycling Carts, and Mechanical Containers.

1.15 **Collection Plan** means the Contractor's written plan for providing Collection Service in compliance with the requirements in this Agreement.

1.16 **Collection Service** means one or more of the various services provided by the Contractor for the Collection of Solid Waste pursuant to this Agreement.

1.17 **Commencement Date** means the day when the Contractor shall begin to provide Collection Services to the City pursuant to this Agreement. The Commencement Date is August ~~November~~ 1, 2015.

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1.18 **Commercial Lawn Care Company** shall mean a Person that provides lawn and garden maintenance services for remuneration. This definition includes landscapers.

1.19 **Commercial Property** shall mean real property that is located in the Service Area and not classified as Residential Property. Commercial Property includes property used primarily for: (a) commercial purposes, such as hotels, motels, stores, restaurants, business offices, theaters, and service stations; (b) institutional purposes, such as governmental offices, churches, hospitals, and schools; and (c) not-for-profit organizations. Commercial Property includes commercially zoned property that is used primarily for residential purposes. Vacant land, not classified as Improved Property, shall be deemed Commercial Property.

1.20 **Community Events** means civic events sponsored or supported by the City and designated by the Director pursuant to Section 36.2, below.

1.21 **Construction and Demolition Debris** means discarded materials generally considered to be not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, resulting from the construction, destruction, or renovation of a structure.

1.22 **Consumer Price Index** or "CPI" means the "Consumer Price Index—All Urban Consumers," all items, not seasonally adjusted, for the Miami-Ft. Lauderdale area, Base Period 1982-84 = 100 (Series ID CUURA0320SA0), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor agency.

1.23 **Contingency Plan** means the Contractor's plan for avoiding an interruption in Collection Service in the event that an emergency or other situation renders the Contractor's operations yard or equipment unusable.

1.24 **Contractor** means Progressive Waste Solutions of FL, IncXYZ Company.

1.25 **Council** means the City Council of the City of Hialeah, Florida.

1.26 **Curbside** means a location adjacent to a road or right-of-way that abuts a Customer's property and provides access for the Contractor's Collection vehicles. If there is no public access to the Customer's property, Curbside shall mean a location that is adjacent to a public or private roadway where the Contractor may lawfully gain access and provide Collection Service to the Customer. The adjacent location shall be within five (5) feet of the road or right-of-way.

1.27 **Customer** means a Person that is entitled to receive Residential Collection Service from the Contractor pursuant to this Agreement.

1.28 **Customer List** shall mean a list that identifies the Residential Property and the Dwelling Units that are entitled to receive Residential Collection Service from the Contractor.

1.29 **Designated Facility** means the facility or facilities designated by the City for the processing or disposal of the Residential Waste collected pursuant to this Agreement.

1.30 **Director** means the Director of the City's Department of Public Works or the Director's designee(s).

1.31 **Disaster Debris** means debris that is produced or generated by a natural or human event that is declared a disaster by the federal government or the City. Disaster Debris includes, but is not limited to, Yard Waste, Construction and Demolition Debris, and Bulky Waste that is produced or generated by such a disaster.

1.32 **Disaster Debris Contract** means the City's contract(s) with one or more contractors for the removal, hauling, processing, disposal, or Recycling of Disaster Debris.

1.33 **District Manager** means the employee designated by the Contractor as the Contractor's primary representative with regard to matters involving this Agreement.

1.34 **Dwelling Unit** means any type of structure or building, or a portion thereof, intended for or capable of being utilized for residential living, except those structures or buildings that are deemed by the City to constitute Commercial Property. A Dwelling Unit includes a room or rooms constituting a separate, independent living area with a kitchen or cooking facilities, a separate entrance, and bathroom facilities, which are physically separated from other Dwelling Units, whether located in the same structure or in separate structures. However, a room in a licensed hotel or motel is not a Dwelling Unit.

1.35 **Effective Date** means the date when this Agreement is signed and duly executed by the City or its designee, which shall occur after the Agreement is signed and duly executed by the Contractor.

1.36 **Electronic Equipment** means large electronic devices that have been discarded, including but not limited to computers, monitors, televisions, cathode ray tubes, printers, scanners, and copying machines.

1.37 **Equipment Yard** means the property owned by the City at 970 E. 56th Street, Hialeah, Florida, that is available to be leased to the Contractor for the temporary storage of the Contractor's Collection vehicles pursuant to Section 25, herein. ~~For the purposes of this Agreement, the Equipment Yard shall be deemed to include the designated area behind the City's Fleet Maintenance Building where the Contractor may use tub grinders or other equipment to chip and grind Bulky Yard Waste. The Equipment Yard includes the office building and real property that are described more specifically in Exhibit 9.~~

1.38 **Exempt Waste** means materials that are exempt from the Contractor's exclusive franchise under this Agreement, as described in Section 21.

1.39 **Field Supervisor** means the Contractor's employee that is responsible for supervising the Contractor's Collection Services in the City.

1.40 **First Operating Year** means the period beginning on August ~~November~~ 1, 2015 (i.e., the Commencement Date) and continuing through and including September 30, 2015~~6~~.

1.41 **~~Reserved Fleet Maintenance Building~~** means the building where the City repairs and maintains the fleet of vehicles the City uses to collect Solid Waste. ~~The Fleet Maintenance Building is adjacent to the Equipment Yard. The Fleet Maintenance Building is described more specifically in Exhibit 10.~~

1.42 **Garbage** means all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials.

1.43 **Garbage Can** means any commonly available metal or heavy-duty plastic receptacle for Solid Waste that has an enclosed bottom and sides, a tight fitting lid or top, handles on the sides, and a capacity of approximately thirty-five (35) gallons or less.

1.44 **Garbage Cart** means a Garbage container that is made with heavy-duty hard plastic or other impervious material, hot-stamped or stenciled with the City logo, with an enclosed bottom and sides, mounted on two (2) wheels, equipped with a tight-fitting hinged lid, having a capacity of approximately one hundred (100) gallons or less, and used for the automated or semi-automated Collection of Garbage and Rubbish.

1.45 **Hazardous Waste** means Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. Hazardous Waste includes any material or substance identified as a hazardous waste, hazardous substance, or hazardous material in the Florida Administrative Code, Florida Statutes, or other Applicable Law.

1.46 **Holiday** means a Day when the Contractor does not need to provide Collection Service to Customers pursuant to this Agreement. The only Holidays are Christmas (December 25) and New Years Day (January 1), unless the City and the Contractor mutually agree to add additional Holidays.

1.47 **Improved Property** means any cleared, graded or drained real property upon which a building or structure is erected and occupied or capable of being occupied (i.e., a Certificate of Occupancy has been issued) for residential, commercial, institutional or industrial use.

1.48 **Indemnified Loss** means all actual costs, losses, damages, expenses, and liabilities that a City Indemnified Party incurs or suffers pursuant to or in connection with any act, omission or negligence on the part of the Contractor or any of its agents, employees, or subcontractors in the execution or performance of its obligations under this Agreement. Such costs include but are not limited to attorneys' fees, court costs, and expert witness fees in all trial, appellate, mediation, and bankruptcy proceedings. An Indemnified Loss includes but is not limited to: (a) any bodily injury, sickness, disease, or death; (b) any violation of Applicable Law (including workers' compensation laws, environmental laws, and health and safety laws) or any common law duty; (c) any actual or alleged infringement of any intellectual rights or property of any Person; (d) any pollution in violation of Applicable Law or damage or destruction to

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property, natural resources, or the environment; (e) any lawsuit resulting from or challenging the designation by the Contractor of any document or material as exempt from public disclosure under the Florida public records laws or otherwise; (f) any lawsuit resulting from or challenging the City's decision to award this Agreement to the Contractor; and (g) defending, settling, prosecuting, investigating, or participating in (as a witness or otherwise) any proceeding that arises out of or pertains to any of the foregoing; in each case, without regard to or limitation by the amount or type of benefits, damages, or compensation payable by or for the Contractor, any subcontractor, or any subcontractor of a subcontractor under any Applicable Law (including employee benefits, disability benefits, and workers' compensation laws).

1.49 Interest means a payment by the City or the Contractor for the use of money, which shall be set at a percentage rate determined pursuant to Section 55.03(1), Florida Statutes.

1.50 Land Clearing Debris means the trees, tree trunks, limbs, stumps, bushes, vegetation, rocks, soil, and other materials resulting from a land clearing or lot clearing operation.

1.51 Legitimate Complaint means any complaint by a Customer or the City in a case where the applicable requirements of this Agreement concerning the Collection of Solid Waste were not satisfied by the Contractor.

1.52 Load means the Solid Waste and other material that is collected and transported in a Collection vehicle.

1.53 Mayor means the City's Mayor (i.e., the City's chief executive officer) or the Mayor's designee(s).

1.54 Mechanical Container means a dumpster, Roll-Off Container, compactor, or other large container that is placed on and removed from a Person's property with mechanical equipment, and used for the Collection of Solid Waste or Recyclable Materials.

1.55 Missed Collection means any occasion when the Contractor fails to provide Collection Service to a Customer on a Scheduled Collection Day in accordance with the provisions of this Agreement.

1.56 Multi-Family Dwelling means a building with multiple Dwelling Units that are located under one roof. Multi-Family Dwellings include apartments, condominiums and mixed-use buildings that contain multiple Dwelling Units.

1.57 New Customer means a Person occupying a Dwelling Unit that did not receive Collection Services from the City before the Commencement Date.

1.58 Non-Collection Notice means a written form, tag, or sticker that is used by the Contractor to notify a Customer of the reason(s) why the materials Set Out by the Customer were not collected by the Contractor.

1.59 Operating Day means a calendar day, except Sundays and Holidays, beginning August November 1, 2015 and continuing throughout the term of this Agreement.

1.60 Operating Month means a calendar month, beginning August November 2015 and each month thereafter throughout the term of this Agreement.

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1.61 **Operating Year** means each period of twelve (12) consecutive months that begins on October 1 and ends on September 30 during the term of this Agreement. However, the First Operating Year shall begin on ~~August~~ November 1, 2015 and end on September 30, 2015.

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1.62 **Ordinances** means the City's Code of Ordinances.

1.63 **OSHA** means the Occupational Safety and Health Act and all implementing regulations.

1.64 **Party** means, depending on the context, either the City or the Contractor.

1.65 **Parties** means the City and the Contractor.

1.66 **Performance Bond** means the financial security furnished by the Contractor as a guarantee that the Contractor will perform its work and pay all lawful claims in compliance with the terms of this Agreement.

1.67 **Person** means any and all persons, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any City or municipality; and any governmental agency of any state or the federal government.

1.68 **Plastic Bag** means a heavy-duty plastic bag that has a drawstring at the top, a capacity of approximately thirty-five (35) gallons or less, and is designed to be used for the Collection of Solid Waste.

1.69 **Premises** means Improved Property.

1.70 **Radioactive Waste** means any equipment or materials that are radioactive or have radioactive contamination, and are required by law to be stored, treated, or disposed of as radioactive waste.

1.71 **Rates** means the fees and charges approved by the City to be paid for the Contractor's Collection Services.

1.72 **Recovered Materials** means metal, paper, glass, plastic, textile, or rubber materials that have known Recycling potential, can be feasibly recycled and have been diverted and source separated or have been removed from the Solid Waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered Materials as described above are not Solid Waste. Recovered Materials does not include any material or substance that does not fit within one of the six categories described in this definition (metal, paper, glass, plastic, textile, or rubber). Among other things, unsorted Construction and Demolition Debris does not constitute Recovered Materials.

1.73 **Recyclable Materials** means those materials that are capable of being recycled and would otherwise be processed or disposed of as Solid Waste.

1.74 **Recycling** means any process by which materials that would otherwise have been Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

1.75 **Residential Collection Service** means the Collection of Residential Waste from Residential Property pursuant to this Agreement.

2.2 LIMITATIONS ON THE CONTRACTOR'S FRANCHISE

This Agreement only grants a franchise for the services and types of Solid Waste that are explicitly addressed herein. No other services or materials are subject to the Contractor's franchise under this Agreement. Section 21, below, identifies some materials that are not subject to this exclusive franchise.

SECTION 3: TERM OF THIS AGREEMENT

This Agreement shall take effect and be binding upon the Parties from the Effective Date until the date when this Agreement terminates or expires. The initial term of this Agreement shall begin on the Effective Date and shall expire on September 30, 2019. At the end of the initial term, this Agreement shall renew automatically, without any action by either Party. The first renewal term shall begin on October 1, 2019 and expire on September 30, 2023. At the end of the first renewal term and each renewal term (if any) thereafter, the City shall have the right to renew this Agreement, unless the Contractor gives written notice to the Director that the Contractor is not willing to renew this Agreement and such notice is delivered at least three hundred sixty (360) calendar days before the end of the then current term of the Agreement. After the first renewal term, each renewal term (if any) shall be one year in duration, unless the City and Contractor mutually agree to a longer term, but the cumulative duration of all subsequent renewal terms (i.e., not including the first renewal term) shall not exceed five (5) years. During the first renewal term and each subsequent renewal term (if any), the City and the Contractor shall be subject to the conditions and limitations that are contained herein, unless the City and the Contractor mutually agree otherwise. However, this Agreement may be terminated at any time pursuant to Section 47 and the other provisions of this Agreement.

SECTION 4: THE SERVICE AREA

4.1 DESCRIPTION OF THE SERVICE AREA

The Service Area includes all of the land located within the incorporated areas of the City. A general map of the Service Area is provided in Exhibit 1.

At the City's option, the City may reduce the size of the Service Area by eliminating approximately three (3) square miles of land that was annexed into the City in 2004 (i.e., the "Annexed Area"). If the City elects to designate and use a privately owned disposal facility pursuant to Section 19.4, below, the City's notice to the Contractor pursuant to Section 19.4 also shall constitute the City's notice to the Contractor that the City intends to exercise its option to reduce the size of the Service Area pursuant to this Section 4.1.

4.2 ADJUSTMENTS TO THE SERVICE AREA

The boundaries of the Service Area may be adjusted if lands are added to or removed from the City pursuant to an annexation, interlocal agreement, or similar change after the Effective Date. In such cases, the rights of the Contractor may be revised in accordance with Section 171.062, Florida Statutes, or other Applicable Laws.

The annexation of lands after the Effective Date may require the Contractor to provide Collection Services in the annexed area or, in the alternative, such area may be served by another Person. In either case, the Contractor shall provide its services to the City (with or without the annexed area)

for the Rates established in this Agreement. There shall be no change in the Contractor's Rates if Collection Service in the annexed area is provided by another Person.

Miami-Dade County may impose a "disposal facility fee" on residents private companies that collect Solid Waste in certain areas that have been annexed by a municipality. The Contractor will not be obligated by this Agreement to pay any such fee. If the County imposes its disposal facility fee on the Contractor for collecting Residential Waste in the Annexed Area pursuant to this Agreement, the City, in its sole discretion, will either pay the disposal facility fee directly to the County or reimburse the Contractor in an amount equal to the Contractor's payments to the County.

SECTION 5: GENERAL SCOPE OF SERVICES

This Section 5 describes the general scope of the Contractor's duties under this Agreement. The general requirements in this Section 5 are supplemented by the specific requirements in other sections of this Agreement. Subject to the conditions contained herein, the Contractor shall:

- (a) use Garbage Cans and manual Collection Service to collect all of the Residential Waste generated in the Service Area, beginning on August ~~November~~ 1, 2015;
- (b) continue to provide manual Collection Service throughout the term of this Agreement, except for those Customers that receive Automated Collection Service pursuant to this Agreement;
- (c) provide a Garbage Cart to each Customer that receives Automated Collection Service pursuant to this Agreement;
- (d) use Garbage Carts to collect Garbage and Rubbish from all Customers that receive Automated Collection Service, beginning no later than February ~~March 28~~, 2016 and continuing throughout the remainder of the term of this Agreement;
- (e) deliver all of the Residential Waste to the City's Designated Facilities;
- (f) ~~chip, grind, cut or otherwise process Bulky Yard Waste to create mulch.~~
- (g) ~~comply at all times with the requirements in this Agreement and Applicable Law;~~
- (h) provide all labor, services, supervision, materials, and equipment necessary to accomplish the Contractor's work under this Agreement; and
- (i) perform all of its work under this Agreement at Contractor's sole expense, in exchange for the payments by the City and Customers of the Rates authorized herein.

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SECTION 6: CONTRACTOR'S TRANSITION PLANS

6.1 GENERAL REQUIREMENTS FOR THE TRANSITION PLANS

The Contractor shall ensure that Customers do not experience any disruption or inconvenience when the Contractor begins to provide its services under this Agreement on the Commencement Date. Accordingly, Contractor shall prepare and provide the Director with a Transition Plan

promptly after the Effective Date. At a minimum, the Transition Plan shall demonstrate that the Contractor will hire and train the necessary personnel, and procure and prepare the necessary vehicles and equipment, prior to the Commencement Date. The Transition Plan is subject to the approval of the Director. If requested, the Contractor shall provide additional information to the Director concerning the Transition Plan, revise the plan within ten (10) calendar days, and resubmit the plan for the Director's approval.

The Contractor shall prepare a new Transition Plan before the Contractor begins to provide Automated Collection Service with Garbage Carts. The new Transition Plan shall satisfy the requirements set forth in the preceding paragraph. In addition, the new Transition Plan shall describe how the Contractor will receive, assemble, and distribute Garbage Carts to all of the Customers that shall receive Garbage Carts under this Agreement.

6.2 DEADLINES BEFORE THE COMMENCEMENT DATE

The Contractor shall provide its Transition Plan to the Director no later than ~~June 1~~ September 1, 2015. At a minimum, the Contractor shall address the following specific performance requirements in the Transition Plan and shall accomplish them no later than the following deadlines:

- (a) By September 1, 2015, Contractor shall provide the Director with purchase orders or other documentation demonstrating that all necessary Collection vehicles and equipment have been ordered and ~~will be delivered to the City's Equipment Yard or the Contractor's equipment yard in Miami-Dade County no later than October 15, 2015.~~
- (b) By September 15, 2015, the Contractor shall provide the Director with an electronic (digital) copy of the notices, brochures, and informational materials the Contractor intend to deliver to Customers concerning the Collection Services the Contractor will provide under this Agreement. The notices, brochures and informational materials shall contain the information required by Section 35, below.
- (c) By ~~June 1~~ October 1, 2015, Contractor shall provide the Director with a Collection Plan, pursuant to Section 23, below, which shall be subject to the approval of the Director.
- (d) By October 1, 2015, Contractor shall provide the Director with a written safety plan covering all aspects of the Contractor's operations under this Agreement, in compliance with the requirements of Section 22, below. The Contractor also shall provide the Director with a Contingency Plan, pursuant to Section 37.4, below.
- (cb) By ~~June 1~~ October 8, 2015, Contractor and City shall meet and discuss the Contractor's Transition Plan and any other matters that will help ensure the successful implementation of the Contractor's Transition Plan.
- (c) By ~~June 15~~, 2015, Contractor shall provide the Director with purchase orders or other documentation demonstrating that all necessary Collection vehicles and equipment have been ordered and ~~will be delivered to the City's Equipment Yard or the Contractor's equipment yard in Miami-Dade County no later than July 15, 2015.~~
- (d) By ~~June 29~~, 2015, Contractor shall provide the Director with a written safety plan covering all aspects of the Contractor's operations under this Agreement, in compliance

with the requirements of Section 22, below. The Contractor also shall provide the Director with a Contingency Plan pursuant to Section 27, below.

- (e) By ~~July 4, 2015~~, the Contractor shall provide the Director with an electronic (digital) copy of the notices, brochures, and informational materials the Contractor intends to deliver to Customers concerning the Collection Services. The Contractor will provide under this Agreement. The notices, brochures, and informational materials shall contain the information required by Section 35, below.
- (f) By ~~October 16, 2015~~, Contractor shall deliver notices, brochures, and informational materials to all Customers concerning Contractor's Collection Services. The notices, brochures, and informational materials shall be subject to the Director's approval and shall be delivered in compliance with the requirements in Section 37.
- (g) By ~~July 19~~ October 19, 2015, the Contractor shall confirm in writing to the Director that all of the vehicles and equipment necessary to provide Residential Collection Service have been delivered to the City's Equipment Yard or to the Contractor's equipment yard in Miami-Dade County.
- (hg) By ~~July 20~~ October 19, 2015, Contractor shall confirm in writing to the Director that all of the vehicles necessary to provide Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the requirements of this Agreement.
- (h) By ~~July 25, 2015~~, Contractor shall deliver notices, brochures, and informational materials to all Customers concerning Contractor's Collection Services. The notices, brochures, and informational materials shall be subject to the Director's approval and shall be delivered in compliance with the requirements in Section 35.
- (i) By ~~July 27~~ October 28, 2015, Contractor and the Director shall meet and discuss the status of Contractor's Transition Plan and its implementation. The Contractor also shall demonstrate that its computer systems are fully operational and capable of tracking complaints and requests for service in compliance with the requirements in Sections 31.1.4 and 31.1.5, below.
- (j) By ~~July~~ October 28, 2015, Contractor shall provide the Director with a vehicle list that identifies the make, model, year, tare weight, license tag number, and identification number for each Collection vehicle that will be used by the Contractor in the Service Area.
- (k) By ~~July 29~~ October 29, 2015, Contractor shall confirm in writing to the Director that: (1) the Contractor has delivered the City-approved notices, brochures, and informational materials to all of the Customers; (2) Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in this Agreement; and (3) all of the Contractor's drivers have inspected their Collection routes and confirmed their ability to complete their routes on the Scheduled Collection Days.

The requirements in Sections 6.2(ea), (fg), and (gh) do not apply to any vehicle that the Contractor will purchase from the City pursuant to Section 28.11, below.

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6.3 DEADLINES BEFORE THE AUTOMATION DATE

The Contractor shall provide a new Transition Plan to the Director no later than ~~September~~ December 1, 2015. At a minimum, the Contractor shall address the following specific performance requirements in the new Transition Plan and shall accomplish them no later than the following deadlines:

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- (a) By ~~September 1, 2015~~ January 4, 2016, Contractor shall provide the Director with a new Collection Plan, which shall be subject to the approval of the Director. The Collection Plan shall explain how Residential Collection Service will be provided with Garbage Carts and Garbage Cans, beginning no later than ~~February~~ March 28, 2016.
- (b) By ~~September 15, 2015~~ January 13, 2016, Contractor and City shall meet and discuss the Contractor's Transition Plan and any other matters that will help ensure the successful implementation of the Contractor's Transition Plan.
- (c) By ~~September 15, 2015~~ January 13, 2016, Contractor shall provide the Director with purchase orders or other documentation demonstrating that all necessary Collection vehicles, equipment, and Garbage Carts have been ordered and will be delivered to the Contractor's equipment yard or the City's Equipment Yard no later than ~~January~~ February 15, 2016.
- (d) By ~~October~~ December 1, 2015, Contractor shall provide the Director with a plan for the assembly and distribution of the Garbage Carts that will be provided to the Customers. The Contractor's plan shall describe the timing, staffing, staging locations, distribution methods, and distribution schedule that will be used to provide the carts to the Customers.
- (e) By ~~October~~ December 15, 2015, the Director and the Contractor shall meet and discuss the Contractor's plan for the assembly and distribution of the Garbage Carts.
- (f) By December 1, 2015, the Contractor shall provide the Director with an electronic (digital) copy of the notices, brochures, and informational materials that the Contractor intends to provide to Customers concerning the Collection Services the Contractor will provide under this Agreement, including Automated Collection Service with Garbage Carts. The notices, brochures, and informational materials shall contain the information required by Section 35, below.
- (g) By ~~January~~ February 15, 2016, the Contractor shall confirm in writing to the Director that all of the vehicles, equipment, and Garbage Carts necessary to provide Automated Collection Service with Garbage Carts have been delivered to the City's Equipment Yard or to the Contractor's equipment yard in Miami-Dade County.
- (h) By ~~January~~ February 22, 2016, Contractor shall confirm in writing to the Director that all of the vehicles necessary to provide Automated Collection Service have been registered, licensed, tagged, and equipped, and are ready to perform in compliance with the requirements of this Agreement.
- (i) By ~~January~~ February 22, 2016, Contractor shall provide the Director with a vehicle list that identifies the make, model, year, tare weight, license tag number, and identification number for each Collection vehicle that the Contractor will use in the Service Area.

- (j) ~~By January 25, 2016~~ At least seven (7) days before the Contractor begins to provide scheduled collection service to its customers, Contractor shall deliver notices, brochures, and informational materials concerning Contractor's Automated Collection Service to all ~~that~~ Customers. The notices, brochures, and informational materials shall be delivered in compliance with the requirements in Section 35, below.
- (k) By ~~January~~ March 16, 2016, Contractor shall confirm in writing to the Director that: (1) the Contractor has delivered the City-approved notices, brochures, and informational materials to all of the Customers; (2) Contractor has hired and trained all of the employees needed to provide Collection Service in compliance with the requirements in this Agreement; and (3) all of the Contractor's drivers have inspected their Collection routes and confirmed their ability to complete their routes on the Scheduled Collection Days.
- (l) By ~~January 27~~ March 23, 2016, Contractor shall confirm in writing to the Director that it has delivered all of the Garbage Carts needed to provide Collection Service in compliance with this Agreement.

SECTION 7: CONTRACTOR'S SPECIFIC COLLECTION SERVICES

7.1 RESIDENTIAL COLLECTION SERVICE

The Contractor shall provide the following Residential Collection Services to each Customer that resides in a Dwelling Unit that is included in the Customer List.

- 7.1.1 The Contractor shall collect each Customer's Garbage and Rubbish at the Curbside twice each week. From the Commencement Date until ~~January 4~~ March 1, 2016, the Contractor shall collect each Customer's Garbage and Rubbish in Garbage Cans, Plastic Bags, and paper bags. Beginning on ~~January 4~~ March 1, 2016, the Contractor may collect Garbage and Rubbish in Garbage Carts. On and after ~~February 4~~ March 28, 2016, the Contractor shall collect Garbage and Rubbish by using Automated Collection Service and Garbage Carts, except in areas that the City designates for manual Collection Service with Garbage Cans. The areas ~~that may be~~ designated for manual Collection Service with Garbage Cans are identified in Exhibit 1. The City will not designate any area for manual Collection Service unless the Contractor requests such designation and demonstrates why the designation is appropriate.
- 7.1.2 If a Customer receives manual Collection Service with Garbage Cans, the Contractor shall collect all of the Garbage and Rubbish that is Set Out at Curbside in the Customer's Garbage Cans, Plastic Bags, and paper bags placed next to the Garbage Cans.
- 7.1.3 If a Customer receives Automated Collection Service, the Contractor shall collect all of the Garbage and Rubbish that is Set Out at Curbside in the Customer's Garbage Cart(s). The Contractor is not obligated to collect Garbage and Rubbish that is placed outside of the Customer's Garbage Cart.
- 7.1.4 ~~Reserved. If a Customer receives Automated Collection Service, the Contractor also shall collect all of the Garbage and Rubbish in Plastic Bags and paper bags that the~~

Customer places adjacent to the Customer's Garbage Carts, from February 1, 2016 through and including March 1, 2016. During this period of time, the Contractor shall leave a Non-Collection Notice on the Customer's Garbage Cart, informing the Customer that after March 1, 2016, the Contractor will only collect the Garbage and Rubbish placed in a Garbage Cart -- i.e., the Contractor will not collect Garbage and Rubbish in Garbage Cans or bags placed outside the Garbage Cart. After March 1, 2016, the Contractor is not obligated to collect the Customer's Garbage or Rubbish unless the Garbage and Rubbish are placed in a Garbage Cart.

7.1.5 The Contractor shall collect each Customer's Bulky Waste at the Curbside once every month.

7.1.6 The Contractor shall collect each Customer's Yard Waste at the Curbside once every month.

7.2 COLLECTION OF BULKY WASTE

7.2.1 The Contractor shall collect all of the Bulky Waste that is Set Out at Curbside by Customers.

7.2.2 ~~The Contractor is not required to collect more than eight (8) cubic yards of Bulky Waste from any Customer in one month. If a Customer Sets Out more than eight (8) cubic yards of Bulky Waste for Collection, the Contractor shall collect at least eight (8) cubic yards of the Customer's Bulky Waste on the Scheduled Collection Day for Bulky Waste, but the Contractor may leave the remainder. If the Contractor elects to leave some of the Bulky Waste at Curbside: (a) the Contractor shall return each Scheduled Collection Day for Bulky Waste and collect a minimum of eight (8) cubic yards of Bulky Waste each time until all of the Customer's Bulky Waste is removed; and (b) the Contractor shall place a Non-Collection Notice on the remaining materials or on the Customer's door knob, in compliance with Section 15.1, below. [Note: Before the Effective Date, the City may elect to have the Contractor collect unlimited quantities of Bulky Waste each month.]~~

~~7.2.3~~ There is no size limit on the length, weight, or diameter of any single piece of Bulky Waste. The Contractor shall collect the Customer's Bulky Waste, regardless of the length, weight, or diameter of any single piece of Bulky Waste. Notwithstanding the foregoing requirements, the Contractor is not obligated to collect a piece of Bulky Waste that is too large or too heavy to safely load and transport in a clamshell truck.

7.3 COLLECTION OF YARD WASTE

7.3.1 The Contractor shall collect all of the Yard Waste that is Set Out at Curbside by Customers, including Yard Waste that is Set Out (a) in Garbage Cans by Customers that receive manual Collection Service and (b) in Garbage Carts by Customers that receive Automated Collection Service.

7.3.2 ~~The Contractor is not required to collect more than eight (8) cubic yards of Yard Waste from a Customer in one month. If a Customer Sets Out more than eight (8) cubic yards of Yard Waste for Collection, the Contractor shall collect at least eight (8) cubic yards of the Customer's Yard Waste on the Scheduled Collection Day for Yard Waste, but the Contractor may leave the remainder. If the Contractor elects to leave some of the Yard~~

~~Waste at Curbside: (a) the Contractor shall return each Scheduled Collection Day for Yard Waste and collect a minimum of eight (8) cubic yards of Yard Waste each time until all of the Customer's Yard Waste is removed; and (b) the Contractor shall place a Non-Collection Notice on the remaining materials or on the Customer's door knob, in compliance with Section 15.1, below. [Note: Before the Effective Date, the City may elect to have the Contractor collect unlimited amounts of Yard Waste each month.]~~

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~~7.3.3~~—There is no size limit on the length, weight, or diameter of a single piece of Yard Waste. The Contractor shall collect the Customer's Yard Waste, regardless of the size, length, weight, or diameter of any single piece of Yard Waste. Notwithstanding the foregoing, the Contractor is not obligated to collect a piece of Bulky Yard Waste that is too large or too heavy to safely load and transport in a clamshell truck. Moreover, the Contractor is not obligated to collect Land Clearing Debris.

7.4 SUPPLEMENTAL COLLECTION SERVICE FOR EXCESS AND OVERSIZED MATERIALS

~~This Agreement does not require the Contractor to collect more than eight (8) cubic yards of Bulky Waste or eight (8) cubic yards of Yard Waste in a single Operating Day. [As noted above, the City may elect to have unlimited Collection of these materials.] At its option, the Contractor may collect excess materials as part of its routine Residential Collection Service. The Contractor also may provide collect excess materials as a Supplemental Collection Service for the Collection of Bulky Waste, Bulky Yard Waste, and other materials at times or in locations or quantities that are not authorized required as part of the Contractor's routine Residential Collection Service. Any Supplemental Collection Service shall be based on a Rate that has been negotiated with the Customer pursuant to Section 38.2, below. However, the Contractor shall not charge a separate fee for the Collection of these materials, unless the Customer agreed to pay the Contractor's Rate before the Contractor provided its Supplemental Collection Service.~~

7.5 SIDE DOOR SERVICE FOR SUBSCRIPTION CUSTOMERS

At its option, the Contractor may provide Side Door Service to any Customer that requests and pays for such service. The Contractor is not required to offer Side Door Service for the Collection of Residential Waste. The Rate for Side Door Service is set forth in Section 38.2, below.

7.6 SIDE DOOR SERVICE FOR DISABLED CUSTOMERS

The Contractor shall provide Side Door Service to a disabled Customer if: (a) the Customer is entitled to receive Residential Collection Service pursuant to this Section 7.6; (b) the Customer has requested and the Director has approved Side Door Service; and (c) the City has given written notice to the Contractor that it shall provide Side Door Service to the disabled Customer. If these criteria are satisfied, Side Door Service shall be provided at no additional cost to the City or Customer. The Customer's Garbage and Rubbish shall be collected at the Customer's side yard, back yard, or other location that is mutually acceptable to the Contractor and the Customer. However, the Contractor is not required to provide Side Door Service for the Collection of Bulky Waste or Yard Waste. The Contractor shall provide Side Door Service to the Customer on the Scheduled Collection Day when Collection Service for Garbage would otherwise be provided to the Customer. The Director shall not approve Side Door Service for any Customer pursuant to this Section 7.6 unless the Director receives (a) a letter from a physician or similar documentation confirming that the Customer is physically unable to use the regular Residential Collection

Service at Curbside and (b) written confirmation from the Customer that there are no able-bodied Persons residing with the Customer.

SECTION 8: HOURS AND DAYS OF CONTRACTOR'S COLLECTION SERVICES

- 8.1 The Contractor may provide Collection Service to Customers every day of the year, except Sundays and Holidays.
- 8.2 The Contractor shall not provide Residential Collection Service before 6:00 a.m. or after 11:00 p.m.
- 8.3 If the City receives complaints about the noise or disturbance caused by the Contractor's Collection Services at a particular location, before 7:00 a.m. or after 6:00 p.m., the Director may restrict the times for the Contractor's Collection Services at that location, without increasing the Contractor's Rates.
- 8.4 Notwithstanding anything else contained herein, the hours and days of Collection Service may be extended or modified (a) when such change is requested by the Contractor and approved in advance by the Director and (b) when the Director determines that such change is necessary or otherwise appropriate.

SECTION 9: SCHEDULES AND ROUTES FOR COLLECTION SERVICES

9.1 SCHEDULES AND ROUTES

From ~~August~~ November 1, 2015 until ~~January~~ March 1, 2016, the Contractor shall follow the same Collection routes that were used by the City before the Commencement Date. During this period, the Contractor shall provide each Collection Service on the same days that the City provided such service. Subject to the requirements contained herein, the Contractor may change its routes and Scheduled Collection Days when the Contractor begins to provide Automated Collection Service (i.e., on or after ~~January~~ March 1, 2016).

To help the Contractor's employees learn the current routes and schedules followed by the City, the City may assign one or more of its employees to ride with the Contractor's employees when providing Collection Services. The City's employees shall be allowed to ride in the Contractor's vehicles from November 1, 2015 until December 31, 2015, when and if such assistance to the Contractor is deemed appropriate by the City.

The Contractor shall establish Collection routes and schedules that satisfy the requirements of this Agreement and maximize the efficiency of the Contractor's operations. The routes established under this Agreement shall be separate from the routes the Contractor uses for the Collection of Solid Waste generated outside of the Service Area (e.g., in another municipality). The Contractor's schedule shall identify the Scheduled Collection Days for Garbage and Rubbish, Bulky Waste, and Yard Waste, respectively, for each Customer. The Contractor shall submit its proposed Collection routes and schedules to the Director as part of the Contractor's Collection Plan. The Contractor's Plan, including the proposed Collection routes and schedules, shall be subject to the Director's approval. After approval is granted, the Contractor shall provide

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Collection Service in accordance with the approved routes and schedules in the Collection Plan. However, the Director may approve a waiver of the requirements in this Section 9.1 if the Contractor demonstrates to the Director's satisfaction that a waiver is in the public interest.

9.2 SCHEDULED COLLECTION DAYS FOR BULKY WASTE AND YARD WASTE

Until ~~January 4~~ March 1, 2016, the Scheduled Collection Days for the Collection of a Customer's Bulky Waste and Bulky Yard Waste shall be the same as they were immediately prior to ~~August~~ November 1, 2015. After ~~January 4~~ March 1, 2016, the Scheduled Collection Day for the Collection of a Customer's Bulky Waste shall be one of the Scheduled Collection Days for the Collection of that Customer's Garbage and Rubbish.

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9.3 SCHEDULES FOR TWICE WEEKLY SERVICE

Whenever the Contractor is required to provide any Collection Service two (2) times per week pursuant to this Agreement, the Scheduled Collection Days shall be seventy-two (72) hours apart, unless the Director approves a different schedule. This requirement applies to the Collection of Garbage and Rubbish.

SECTION 10: CHANGES TO COLLECTION SCHEDULES AND ROUTES

10.1 NO CHANGES WITHOUT DIRECTOR'S APPROVAL

After the Commencement Date, the Contractor shall not change a Collection route, a Collection schedule, or the method of providing Collection Service until the Contractor receives the Director's written approval for the proposed change. The Contractor shall submit to the Director a description of all proposed route, schedule, and operational changes at least thirty (30) calendar days prior to the implementation of such changes.

10.2 HOLIDAY SCHEDULES

When a Customer's Scheduled Collection Day for Garbage falls on a Holiday, the Contractor may delay the Collection of the Customer's Garbage until the first Scheduled Collection Day for Garbage following the Holiday. Consequently, the Customer will receive Collection Service for Garbage only one time during the week of the Holiday. If a Customer's Scheduled Collection Day for Bulky Waste or Yard Waste falls on a Holiday, the Contractor shall provide Collection Service for the Bulky Waste or Yard Waste, as the case may be, no later than the first week following the Holiday, unless the Director approves a different schedule.

10.3 PUBLIC NOTICE OF CHANGES

If the Director approves a change in the Contractor's schedules or routes, the Contractor shall provide each affected Customer with written notice of the change and shall comply with the requirements in Section 35, below, unless a different notice is authorized by the Director.

10.4 NOTICE OF TEMPORARY DELAYS

The Contractor shall inform the Director about any event (e.g., disabled trucks, accidents, or shortage of staff) that will cause delays in the Contractor's normal Collection Schedule and the Contractor shall provide such notice within two (2) hours of the event.

10.5 NO DELAYS EXCUSED FOR FLUCTUATIONS IN SOLID WASTE QUANTITIES

The quantity of Solid Waste generated in the City may fluctuate during each Operating Year and from year-to-year. These fluctuations will not justify or excuse a failure by the Contractor to provide Collection Service in compliance with the approved schedules and routes. The Contractor is responsible for the timely Collection of all of the Solid Waste that is Set Out on the Scheduled Collection Days, subject to the conditions herein, regardless of any fluctuations in the amount of material that is Set Out.

SECTION 11: RESERVED

SECTION 12: THE CUSTOMER LIST

- 12.1 The City shall prepare a Customer List, which shall identify each parcel of Residential Property and each Dwelling Unit that is entitled to receive Residential Collection Service from the Contractor pursuant to this Agreement. No later than ~~June 15~~ October 1, 2015, the City shall provide its preliminary Customer List to the Contractor. The preliminary Customer List shall be based on the City's billing records for water service, and the list shall be subject to any additions or deletions deemed appropriate by the City. If the Contractor believes the Customer List is inaccurate or incomplete, the Contractor shall promptly notify the Director about any proposed additions, deletions, or other revisions to the Customer List.
- 12.2 The Contractor shall have an affirmative duty to help ensure that the Customer List is accurate at all times. The Contractor shall notify the City within three (3) Operating Days if the Contractor begins to provide Residential Collection Service to a Dwelling Unit that is not on the Customer List. The Contractor also shall notify the City within three (3) Operating Days if the Contractor identifies a Dwelling Unit that should be added to or deleted from the Customer List.
- 12.3 The City shall notify the Contractor promptly after (a) a Certificate of Occupancy is issued by the City for a new Dwelling Unit that should be added to the Residential Customer List and (b) the City begins to provide water service to such Dwelling Unit. After receiving this notification, the Contractor shall begin to provide Residential Collection Service to such Dwelling Unit within three (3) Operating Days.
- 12.4 The City shall notify the Contractor if the City wants the Contractor to terminate its Residential Collection Service to a Dwelling Unit or parcel of Improved Property. The Contractor shall terminate its Residential Collection Service within three (3) Operating Days after receiving the City's notice.
- 12.5 The City shall update the Customer List at least once each Operating Month. The City shall adjust the Customer List to correspond with the occupancy of existing and new buildings, as well as the demolition of old buildings. Further, the Customer List shall be revised to show that an existing Dwelling Unit is unoccupied if the City has temporarily or permanently terminated water service to the Dwelling Unit at the Customer's request. At a minimum, each update to the Customer List shall identify the changes in occupancy that occurred two (2) months before the

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- 18.7 If access to a street, alley, bridge, or public or private roadway becomes impassable or if access is denied for any reason, the Contractor shall work with the Customer to determine a mutually acceptable location for the Collection of the Customer's waste. If a mutual agreement cannot be reached, the Contractor shall provide Collection Service from the nearest public roadway that is accessible by the Contractor's Collection vehicle, or from a location specified by the Director.
- 18.8 If the Contractor encounters a Customer or situation (e.g., dogs; narrow streets; low-hanging electrical wires) that prevents the Contractor from gaining the access needed to provide the Collection Service required in this Agreement, and the Contractor is unable to resolve the issue with the Customer, then the Contractor shall report the problem to the Director and the Director shall resolve the problem. The Director may require the Contractor or the Customer to take such action as the Director deems necessary and appropriate.

SECTION 19: THE CITY'S DESIGNATED FACILITIES

- 19.1 The Contractor shall deliver all of the Residential Waste collected pursuant to this Agreement to Designated Facilities.
- 19.2 The Designated Facilities for Garbage, Rubbish, and Bulky Waste are the Dade County Resources Recovery Facility, located at 6990 NW 97th Avenue, Doral, Florida, and the Medley Landfill, located at 9350 NW 89th Avenue, Medley, Florida.
- 19.3 The Designated Facility for Bulky Yard Waste is the City's Enterprise Landfill and Transfer Station, located at 9344 E. 56th Street, Hialeah, FL 33150, Miami, Florida. ~~[Note: The City's RFP allows each Proposer to offer a Rate based on the use of an alternate location for managing the City's Bulky Yard Waste. If the City accepts the Proposer's offer, the Proposer's site will be identified as the Designated Facility for Bulky Yard Waste.]~~
- 19.4 The City currently has an interlocal agreement with Miami-Dade County for the disposal of the City's waste. This interlocal agreement is scheduled to expire on or about October 1, 2015. At its option, the City may designate one or more new disposal facilities for Garbage, Rubbish, and Bulky Waste after the City's interlocal agreement with Miami-Dade County expires. However, the Contractor will not be required to use a newly designated disposal facility for these wastes before February 1, 2016, unless the Contractor also agrees to the change.
- 19.5 If the City selects a new Designated Facility for Garbage and Rubbish, or Bulky Waste, the Contractor's Rates may change, depending on the distance to the Designated Facility from the City centroid. For the purposes of this Agreement, the approximate location of the City centroid shall be deemed to be 1201 West 49th Street, Hialeah, Florida. The distance to a Designated Facility will be measured from the City centroid, in highway miles (i.e., not a straight line), using Google Maps. In Exhibit 3 (Tables A, B, E, and F), the Contractor's Rates are provided for facilities located (a) within ten miles (i.e., 10.0 miles or less) of the City centroid, (b) between ten and twenty miles (i.e., 10.1 to 20.0 miles), and (c) between twenty and thirty miles (i.e., 20.1 to 30.0 miles). If the distance to a Designated Facility falls within one of these ranges, the City and the Contractor shall use the Rates shown in Exhibit 3. For example, if the new Designated Facility is located fourteen (14) miles from the City centroid, the Parties shall use the Rate in Exhibit 3 for ten (10) to twenty (20) miles. Notwithstanding the foregoing provisions in this Section 19.5, if the new Designated Facility is located seven (7) miles or less from the City centroid, there shall be no increase in the Rates paid by the City.

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The foregoing provisions in this Section 19.5 apply if the City does not elect to have the Contractor dispose of the City's waste pursuant to Section 7.6, below. If the City timely accepts the Contractor's offer to dispose of the City's Garbage, Rubbish, and or Bulky Waste, the Rates will be established by using Tables C, D, G, and or H, as applicable, in Exhibit 3. [Note: The RFP allows each Proposer to submit Rates based on the use of any permitted disposal facility. If the City elects to use the facility offered by the Proposer, the Designated Facility will be changed, as described in Exhibit 15 to this Agreement.]

SECTION 20: SPILLAGE AND LITTER BY CONTRACTOR

- 20.1** Contractor shall not cause or allow any Solid Waste, liquid, or other material to be spilled, released, or otherwise dispersed in the City as a result of the Contractor's activities.
- 20.2** Contractor shall immediately pick up any spillage or litter from Collection Containers that is caused by the Contractor.
- 20.3** When hauling or transporting any material over public roads in the City, the Contractor shall use a covered or enclosed vehicle or other device to prevent the material from falling, blowing, or escaping from the vehicle. If Solid Waste or any other material escapes from or is scattered by Contractor's vehicle for any reason, Contractor shall immediately pick up such material.
- 20.4** Contractor's vehicles shall not release or cause litter in violation of the Florida Litter Law (Section 403.413, Florida Statutes) or the Ordinances. If litter is released or falls from Contractor's vehicle for any reason, the Contractor shall immediately stop the vehicle and retrieve the litter.
- 20.5** The Contractor shall immediately clean up any oil, hydraulic fluid, leachate, fuel, or other liquid that leaks or spills from Contractor's vehicles. The Contractor shall repair any damage associated with such leaks and spills. The Contractor shall repave the damaged area if the Director concludes such action is necessary to repair the damage caused by the Contractor. The requirements in Section 17.6 shall apply to the Contractor's actions under this Section 20.5.
- 20.6** If the Director or a Customer notifies the Contractor before 12 p.m. (noon) that the Contractor has caused litter, or caused a leak or spill of Solid Waste, oil, hydraulic fluid, or other liquids or materials, the Contractor shall clean up the liquids and materials before the end of that Operating Day. If the Director or a Customer notifies the Contractor after noon, the Contractor shall clean up the liquid or material before noon on the next Operating Day.

SECTION 21: EXEMPT WASTES

The following types of Exempt Waste are not subject to the Contractor's exclusive franchise under this Agreement: this Agreement does not give the Contractor the exclusive right to collect any Exempt Waste. These Exempt Wastes may be collected by the owner or occupant of the Improved Property where the Exempt Waste is generated, or by their agent, and taken to any facility that is licensed to receive such materials. This Section 21 also does not prohibit the Contractor from collecting Exempt Waste (e.g., as a Supplemental Collection Service), provided that the Contractor complies with all Applicable Law when collecting such waste.

- 21.1** Solid Waste generated on Commercial Property.

- 22.4 The Contractor shall follow all OSHA regulations and Applicable Laws regarding personal protective equipment.
- 22.5 The Contractor's employees shall be trained and instructed to drive in a safe, defensive manner. Among other things, the drivers of the Contractor's Collection vehicles shall be instructed that they shall not "text" or talk on their cellular telephone while they are driving a Collection vehicle that is moving.
- 22.6 The Contractor's safety plan shall include a written procedure for the immediate removal to a hospital or a doctor's care of any employee or other Person that is injured and requires medical assistance.
- 22.7 Contractor shall update its safety plan whenever there are changes in Contractor's operations. The Contractor shall deliver an updated safety plan to the Director with the Contractor's annual report, pursuant to Section 34.4, below.

SECTION 23: THE CONTRACTOR'S COLLECTION PLAN

- 23.1 The Contractor shall prepare a Collection Plan that describes in detail how the Contractor will provide Collection Service in compliance with the requirements in this Agreement. At a minimum, the Collection Plan shall identify and describe the vehicles, equipment, personnel, routes, and schedules the Contractor will use for each type of Collection Service. The Collection Plan shall include a legible map for each Collection route, identifying the Operating Days when Collection Service will be provided on each route, the starting and ending points for each route, and the type of Collection Service that will be provided on each route on each Scheduled Collection Day.
- 23.2 The Collection Plan shall identify each Designated Facility that will receive the materials collected by the Contractor pursuant to this Agreement.
- 23.3 The Collection Plan shall identify the procedures that will be used by the Contractor to ensure that the City is not billed inappropriately for the Collection, disposal, or Recycling of Solid Waste or other materials. Among other things, the Collection Plan shall identify the procedures that will be used by the Contractor to ensure that each Designated Facility is fully informed whenever the Contractor delivers Solid Waste or other material for which the Contractor, rather than the City, must pay the applicable Tipping Fee (e.g., when Solid Waste is collected from a Person that is not a Customer under this Agreement).
- 23.4 If requested by the Director, the Collection Plan shall include the manufacturer's specification sheets for the Collection Containers provided by the Contractor under this Agreement.
- 23.5 An updated Collection Plan shall be submitted to the Director whenever the Contractor changes the plan.
- 23.6 The Collection Plan and all revisions to the plan are subject to the Director's prior written approval.
- 23.7 As indicated in Section 9.1, from August 1, 2015 until January 4, 2016, the Contractor's Collection Plan shall use the same routes and Scheduled Collection Days that were used by the City immediately before the Commencement Date.

SECTION 24: OWNERSHIP OF SOLID WASTE

Solid Waste belongs to the Person generating such waste, until the Solid Waste is discarded by that Person (i.e., the generator) and collected by the Contractor. When the Contractor collects Residential Waste on behalf of the City, title to the waste shall pass to the Contractor when the waste is collected. The Contractor shall be solely responsible and liable for the proper handling and lawful management of such waste until it is delivered to and accepted by a Solid Waste Management Facility.

SECTION 25: CONTRACTOR'S USE OF CITY'S EQUIPMENT YARD AND OTHER FACILITIES

25.1 The City owns an Equipment Yard located at 970 E. 56th Street, Hialeah, Florida, which the Contractor may shall lease from the City. The lease for the Equipment Yard is attached to this Agreement in Exhibit 9. ~~If the Contractor wishes to use the Equipment Yard, the Contractor shall:~~ (a) execute the lease and deliver it to the City Attorney at least five (5) days before the Effective Date; (b) pay rent, which initially shall be Nine Thousand Dollars (\$9,000) per Operating Month; and (c) comply with the conditions contained in Exhibit 9. Under the Lease, the Contractor may occupy the Equipment Yard on August November 1, 2015. ~~If the Contractor leases the Equipment Yard, the Contractor shall be responsible for all routine repairs and maintenance of the Equipment Yard during the term of the lease; however, the City shall be responsible for any single repair that will cost more than Five Thousand Dollars (\$5,000).~~

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25.2 The Contractor may use the Equipment Yard for the temporary storage of the vehicles, Mechanical Containers, and Carts that the Contractor uses to provide Collection Services under this Agreement. The Contractor also may use the Equipment Yard for the storage of vehicles, Mechanical Containers, and Carts that the Contractor uses in other communities. The Contractor shall not perform any activity in the Equipment Yard that is likely to cause pollution of the soil or water on, under, or adjacent to the Equipment Yard. Among other things, the Contractor shall not use the Equipment Yard as a place to (a) repair or wash vehicles or (b) store Garbage. The Contractor also shall not use the Equipment Yard for any activity that is not explicitly approved in this Agreement or the lease in Exhibit 9, unless the Contractor receives the Director's prior written approval for such activity and such activity is in compliance with all Applicable Law.

25.3 ~~When the Contractor collects Bulky Yard Waste under this Agreement, the Contractor shall deliver the Bulky Yard Waste to the Equipment Yard (i.e., the designated area behind the Fleet Maintenance Building), where the Contractor shall chip, grind, cut or otherwise process the Bulky Yard Waste to produce mulch. The Contractor also may deliver Yard Waste to the Equipment Yard that was generated or collected outside the City. [Note: The City may allow the Contractor to use another permitted location to process and/or dispose of Bulky Yard Waste. If the City allows the Contractor to use another location, the City will revise this Section 25 accordingly.] Reserved.~~

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25.4 The City owns certain equipment that the City currently uses in the Equipment Yard to create mulch from Bulky Yard Waste. Specifically, the City uses a Mobark 5000 horizontal grinder (Unit Number 3802) and a front end loader (Unit Number 38037). The Contractor shall have the right to use this equipment at the Equipment Yard, without charge, if the Contractor leases the Equipment Yard and delivers written notice to the Director on or before July 1, 2015, that the Contractor wishes to use this equipment, subject to the requirements in this Agreement. The Contractor's right to use this equipment shall expire if the Contractor fails to give timely notice to the Director. If the Contractor elects to use the City's mulching equipment, the Contractor shall:

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(c) be solely responsible for the maintenance and repair of the City's equipment, (d) at a minimum, maintain the equipment in compliance with the maintenance schedule set forth in (c), and (e) return the equipment to the City upon the expiration or termination of this Agreement, in the same condition the equipment was in on the Commencement Date, except for normal wear and tear. At its option, the Contractor may purchase or lease other equipment to use in addition to or in lieu of the City's equipment, when making mulch in the Equipment Yard Reserved.

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- 25.5 The Contractor shall chip, grind, cut or otherwise process all of the Bulky Yard Waste to produce mulch within ninety (90) days after the Bulky Yard Waste is delivered to the Equipment Yard. The Contractor shall remove all of the mulch from the Equipment Yard within ninety (90) days after the mulch is produced from the Bulky Yard Waste. The Bulky Yard Waste does not become processed, and the mulch shall be removed, on a "first in, first out" basis. Reserved.

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- 25.6 The Contractor shall maintain adequate fire lines around the perimeter of the piles used to store Bulky Yard Waste and mulch on the Equipment Yard. The Contractor shall take all steps necessary to ensure safe access to these piles at all times. The Contractor shall not allow any pile of Bulky Yard Waste or mulch to exceed twenty (20) feet in height above the surrounding grade. If the Director concludes that the size or age of any pile of Bulky Yard Waste or mulch poses a threat to the public health, safety or welfare, the Director may instruct the Contractor to reduce or remove the pile, or take such other action as the Director deems appropriate. The Contractor shall comply with the Director's request within five (5) Operating Days. Reserved.

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- 25.7 If the Contractor leases the Equipment Yard, the Contractor may lease three (3) bays in the City's Fleet Maintenance Building, which the Contractor may use for the repair and maintenance of the vehicles used by the Contractor to provide Residential Collection Service under this Agreement. The Contractor also may use the Fleet Maintenance Building to repair and maintain the Contractor's other vehicles. The use of the City's Fleet Maintenance Building shall be subject to the conditions and restrictions set forth in the lease that is attached hereto in Exhibit 10. The rent for the use of the Fleet Maintenance Building initially shall be Five Thousand Dollars (\$5,000) per Operating Month, subject to the conditions in Exhibit 10. If the Contractor wishes to lease the Fleet Maintenance Building, the Contractor shall execute the lease contained in Exhibit 10 and then submit the executed lease to the City Attorney at least five (5) days before the Effective Date. The Contractor may occupy the Fleet Maintenance Building beginning August 1, 2015. Reserved.

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- 25.8 If the Contractor leases the Equipment Yard, the Contractor may use the City's vehicle washing facility to wash the vehicles that are used to provide Residential Collection Service under this Agreement. The City's vehicle washing facility is located in relatively close proximity to the Equipment Yard and Fleet Maintenance Building. The Contractor shall deliver written notice to the Director on or before July 1, 2015 if the Contractor wishes to exercise this option. The Contractor's right to use the City's vehicle washing facility shall expire if the Contractor fails to provide timely notice to the Director. The use of the City's vehicle washing facility shall be subject to the conditions and restrictions set forth in the Consent of Use Agreement that is attached hereto in Exhibit 11. The fee for using the City's vehicle facility initially shall be [To Be Set By City] Dollars (\$) per vehicle, subject to the conditions in Exhibit 11. Reserved.

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- 25.9 If the Contractor leases the Equipment Yard, the Contractor may use the City's vehicle fueling facility to refuel the vehicles that are used to provide Residential Collection Service under this Agreement. The City's vehicle fueling facility is located in close proximity to the

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Equipment Yard. The Contractor shall deliver written notice to the Director on or before July 1, 2015. If the Contractor wishes to exercise this option, the Contractor's right to use the City's vehicle fueling facility shall expire if the Contractor fails to provide timely notice to the Director. The use of the City's fueling facility shall be subject to the conditions and restrictions set forth in the Consent of Use Agreement that is attached hereto in Exhibit 14. The fee for using the City's fueling facility initially shall be thirty-five cents (\$0.35) per gallon, subject to the conditions in Exhibit 14. Reserved.

- 25.10 If the Contractor executes one or more leases or consents of use with the City pursuant to the provisions in this Section 25, the City shall indemnify and hold harmless the Contractor with regard to any damages or liabilities that are incurred by the Contractor as a result of pre-existing pollution in the areas covered by any such lease or consent of use. More specifically, the City shall indemnify the Contractor and hold the Contractor harmless from any damages or liabilities that are incurred by the Contractor as a result of any pollution in violation of Applicable Law that exists on, under, or adjacent to the City's Equipment Yard, ~~Fleet Maintenance Building, vehicle washing facility, or vehicle fueling facility~~ on the Commencement Date. However, this indemnification does not apply to pollution, other environmental contamination, damages or other liabilities to the extent they are caused by or result from the acts or omissions of the Contractor or its subcontractors on or after the Commencement Date. In the event of joint negligence on the part of the City and the Contractor, all losses and costs shall be apportioned in accordance with Section 51.3, below.

SECTION 26: SET OUT PROCEDURES FOR CUSTOMERS

The procedures and requirements established in this Section 26 shall be followed by the Contractor's Customers. However, the Contractor shall collect a Customer's Solid Waste, even if the Customer fails to comply with one or more of the requirements in this Section 26, unless (a) the Director concurs in advance that the Contractor does not need to provide Collection Service to the Customer or (b) the Contractor places a Non-Collection Notice on the Customer's Collection Container and complies with the requirements in Section 15, above. The requirements in the City's Ordinances, including but not limited to Chapter 78 of the City Code, shall supplement the requirements contained herein.

26.1 GENERAL PROCEDURES FOR ALL CUSTOMERS

- 26.1.1 Garbage and other putrescible waste shall not be collected, stored, or Set Out in an open or uncovered box, bag, or Collection Container.
- 26.1.2 Customers shall not overfill a Collection Container; the lid on a Collection Container shall be closed securely by the Customer.
- 26.1.3 A Customer shall not place their Solid Waste in another Person's Collection Container, unless they have received prior approval to do so.
- 26.1.4 A Customer shall only Set Out for Collection the Solid Waste that the Customer generated. A Customer shall not Set Out for Collection any Solid Waste that was generated by another Person.
- 26.1.5 A Customer's Solid Waste shall be Set Out for Collection on the Premises where the Solid Waste was generated.

- 26.1.6 A Customer shall not Set Out Solid Waste for Collection on property that is not owned or occupied by the Customer, unless the Customer has received the prior approval of the owner or occupant of such property.
- 26.1.7 Garbage Carts shall not be loaded in excess of the cart's rated capacity (as shown on the lid of the cart). Garbage Cans shall not be loaded with more than fifty (50) pounds of material.
- 26.1.8 If the Customer and Contractor cannot agree upon an appropriate location to Set Out a Collection Container or non-containerized waste, the Director shall designate the point of Collection.
- 26.1.9 When necessary to carry out the purpose and intent of this Agreement, the Director may authorize the placement of a Collection Container off of a Customer's Premises.

26.2 SPECIFIC PROCEDURES FOR CUSTOMERS

- 26.2.1 After February March 1, 2016, each Customer receiving Automated Collection Service shall Set Out their Garbage and Rubbish in a Garbage Cart.

If a Customer resides in an area that does not receive Automated Collection Service (i.e., the Customer resides in an area where Collection Service is provided with Garbage Cans), the Customer shall Set Out their Garbage and Rubbish in Garbage Cans. If such Customer's Garbage Cans are full, the Customer may Set Out their excess Garbage and Rubbish in Plastic Bags, which shall be placed next to the Garbage Cans at Curbside. (Exhibit 1 identifies the areas that may will receive Collection Service with Garbage Cans on and after February March 1, 2016.)
- 26.2.2 Customers shall place their Yard Waste at Curbside for Collection. Leaves, twigs, and other small pieces of Yard Waste should be placed in a Garbage Can, biodegradable bag, or Plastic Bag. Yard Waste may ~~if the Customer receives manual Collection Service, and should be placed in Garbage Carts if the Customer receives Automated Collection Service.~~ Bulky Yard Waste shall be stacked neatly in a pile at Curbside. A Customer may, but is not required to, tie Bulky Yard Waste in a bundle.
- 26.2.3 Each Customer shall place their Residential Waste (i.e., Garbage, Rubbish, Yard Waste, and Bulky Waste) at the Curbside prior to 6:00 a.m. on the Scheduled Collection Days for such waste.
- 26.2.4 Any large pieces of carpet Set Out for Collection at Curbside shall be rolled and tied or otherwise bound.
- 26.2.5 Each Garbage Can used by a Customer shall: be constructed so as to prevent intrusion by water and animals, and the expulsion of its contents; have a cover that is free from sharp edges; and not have inside structures that prevent the free discharge of the container's contents.
- 26.2.6 A Customer may Set Out the Yard Waste and Bulky Waste that was generated by a Commercial Lawn Care Company or plant nursery on the Customer's Residential Property while such Person was working for the Customer. However, a Customer

shall not Set Out such materials if they were generated on any other property, even if the other property is owned by the Customer. ~~Further, a Customer shall not Set Out more than eight (8) cubic yards of Yard Waste or Bulky Waste for Collection on any Scheduled Collection Day.~~

- 26.2.7 Plastic Bags and biodegradable bags shall not be loaded with materials weighing more than thirty (30) pounds or the rated capacity of the bag, whichever is less.
- 26.2.8 Customers shall not mix or co-mingle Garbage with Bulky Waste or Yard Waste. Bulky Waste, Yard Waste, and Garbage shall each be Set Out separately for Collection.

SECTION 27: COLLECTION CONTAINERS

27.1 PURCHASE AND OWNERSHIP OF CONTAINERS

- 27.1.1 Garbage Cans, Plastic Bags, and Biodegradable Bags – Each Customer shall purchase and provide the Garbage Cans, Plastic Bags, and biodegradable bags, if any, that the Customer uses. Garbage Cans shall remain the property of the Customer.
- 27.1.2 Garbage Carts The Contractor shall purchase all of the Garbage Carts that the Contractor provides under this Agreement.

Before ~~February 1~~ March 28, 2016, the Contractor shall purchase, assemble, and deliver one new Garbage Cart to each Customer that is entitled to receive Automated Collection Service. Each Garbage Cart delivered to these Customers shall have a capacity of approximately ninety-six (96) gallons, unless the Director authorizes the delivery of a different size.

After ~~February 1~~ March 28, 2016 and throughout the remainder of the term of this Agreement, the Contractor shall purchase, assemble, and deliver one new Garbage Cart to each New Customer that becomes a resident in an area that receives Automated Collection Service. The cart shall be delivered within three (3) Operating Days after the New Customer or the Director requests the Contractor to deliver the cart.

After ~~March 28~~ February 1, 2016 and throughout the remainder of the term of this Agreement, the Contractor shall purchase, assemble, and deliver: (a) one new or refurbished Garbage Cart to each Customer that needs to replace a cart because their cart was stolen, or damaged or worn beyond repair; and (b) a new Garbage Cart to each Customer that wishes to purchase a cart pursuant to Section 39.7, below. In all such cases, the carts shall be delivered within three (3) Operating Days after they are requested by the Customer or the Director. For the purposes of this Section 27.1.2, a “refurbished” cart shall mean a cart that was cleaned and repaired to “like new” condition.

Garbage Carts purchased by the Contractor shall become the property of the City when the carts are delivered to a Customer or the City. Upon termination or

have accumulated in the vehicle's cargo area during loading and transport operations.

- 28.1.4 Each Collection vehicle shall fully enclose the Contractor's Load. A Collection vehicle shall have a fully enclosed metal top, a tarpaulin, or a net cover with mesh openings not greater than one and one-half (1½) inches in size. The top, tarpaulin, or cover shall be kept in good working condition and shall be free from tears and holes. The Contractor shall use the cover and shall fully enclose the Contractor's Load at all times when the vehicle's speed exceeds twenty (20) miles per hour and at other times when necessary to prevent the Contractor's Load from blowing out of the vehicle.
- 28.1.5 All Collection vehicles shall be painted a uniform color and in a uniform manner, consistent with the requirements in Section 28.7, below.
- 28.1.6 Advertising shall not be allowed on the Contractor's vehicles, Collection Containers, or equipment used to provide Collection Service in the City.

28.2 DEDICATED FLEET FOR CITY

The Contractor shall maintain a dedicated fleet of vehicles for the City's benefit. The vehicles used to provide Collection Services under this Agreement shall not be used to collect Solid Waste or Recyclable Materials outside of the Service Area, and vehicles used outside of the Service Area shall not be used to provide Collection Service pursuant to this Agreement, unless the Contractor receives the Director's prior written approval for such activity. Notwithstanding the foregoing requirements, a vehicle normally used outside of the Service Area may be used temporarily (i.e., not more than five (5) consecutive Operating Days) to provide Collection Service in the Service Area when needed to replace a vehicle in the City's fleet.

28.3 AGE OF CONTRACTOR'S COLLECTION VEHICLES

None of the Collection vehicles used by the Contractor under this Agreement shall be more than seven (7) years old, unless it is used only as a reserve vehicle. Reserve vehicles shall not be more than ten (10) years old. However, these age limits shall not apply to vehicles purchased from the City pursuant to Section 28.11, below, until February 28, 2016. Beginning February 28, 2016, these age limits shall apply to all of the Contractor's Collection vehicles, including vehicles that were purchased from the City.

28.4 GPS AND ANCILLARY EQUIPMENT IN CONTRACTOR'S VEHICLES

- 28.4.1 All vehicles used to provide Collection Services under this Agreement shall be equipped at all times with: (a) all safety equipment required by Applicable Laws; (b) a fire extinguisher; (c) a shovel and broom; (d) a spill response kit; and (e) an audible back-up warning device. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Contractor's Collection vehicles.
- 28.4.2 All vehicles used to provide Collection Services under this Agreement shall be equipped with a two-way radio, cellular telephone, or other equipment appropriate for communications between the vehicle operator, the Field Supervisor, and the

displayed at all times, on the driver's side and the passenger's side of the vehicle body, in letters at least four (4) inches high.

- 28.7.3 The vehicles used by the Contractor to collect Solid Waste shall be painted in a manner that matches the City's Collection vehicles. The Contractor's vehicles shall display the City's logo and information promoting the City's Solid Waste programs. The color of the Contractor's Collection vehicles, as well as the lettering and information displayed on the Contractor's vehicles, shall be subject to the approval of the Director, which approval shall not be unreasonably withheld. The requirements in this Section 28.7.3 do not apply to vehicles that are used solely as spare or reserve or replacement vehicles.

28.8 COMPLIANCE WITH THE LAW APPLICABLE TO VEHICLES

- 28.8.1 At all times, the Contractor and its employees shall operate and maintain all Collection vehicles and equipment in compliance with all Applicable Laws.
- 28.8.2 At all times, the Contractor shall maintain all necessary licenses and registrations, and shall timely pay all fees and taxes, on all vehicles and equipment, as required under Applicable Laws.
- 28.8.3 All equipment shall be operated in compliance with the Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, and the Ordinance.

28.9 CITY'S RIGHT TO INSPECT CONTRACTOR'S VEHICLES AND EQUIPMENT

- 28.9.1 The Director may inspect the Contractor's vehicles, equipment, licenses, and registrations at any reasonable time. The City reserves the right to inspect each Collection vehicle, each day, without providing advance notice to the Contractor.
- 28.9.2 The Director shall have the authority to require the Contractor to immediately remove from service any Collection vehicle or equipment that is leaking or spilling fluids, Solid Waste, or other materials. The Director also may require any Collection vehicle, Collection Container, or other equipment to be cleaned, washed, painted, repaired, or maintained immediately. If the Director requests such action, the Contractor shall comply with the Director's request within one (1) Operating Day or the Contractor shall take the vehicle, container, or equipment out of service until the requested work can be completed. Further, the Director may require the Contractor to pressure wash and clean any location where one of the Contractor's vehicles or Collection Containers leaked fluids or spilled Solid Waste and thereby stained soils or pavement, or created an odorous or nuisance condition.

28.10 LOCAL STORAGE AND REPAIR OF CONTRACTOR'S VEHICLES

Throughout the term of this Agreement, the Contractor shall provide a storage yard, garage, and maintenance facility that enables all-weather, year-round maintenance operations for the vehicles and equipment used pursuant to this Agreement. The storage yard, garage, and maintenance facility shall be located in the City or Miami-Dade County. Subject to the conditions in Section 25, the Contractor may store its vehicles at the City's Equipment Yard and the Contractor may use three (3) bays in the City's Fleet Maintenance Building to repair or maintain its vehicles.

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28.11 SALE OF THE CITY VEHICLES

The City intends to sell certain vehicles that the City currently uses for the Collection of Residential Waste. Exhibit 8 identifies the vehicles that the City is willing to sell and the price that the City will charge for each vehicle. The Contractor shall arrange to buy the right to purchase as many all of the vehicles identified in Exhibit 8 as the Contractor wishes. If the Contractor delivers notice to the Director on or before July 1, 2015 and each party agrees to the specific vehicles the Contractor intends to purchase,

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All of the City's vehicles will be sold "as is." The City provides no warranty or guarantee of any kind concerning any vehicle.

If the Contractor wishes to purchase any City vehicles and satisfies the requirements set forth above, then the Parties agree, otherwise, the sale of the City vehicles to the Contractor shall close on Friday, July 31/October 30, 2015. Following the successful completion of the closing, possession of the vehicles shall be transferred to the Contractor, or the entity taking title, on July 31/October 30, 2015, at the close of business, which shall be deemed to be no earlier than 6:00 p.m. and no later than 8:00 p.m. (EST). Possession of the vehicles shall be delivered to the Contractor, or the entity taking title, at the Equipment Yard. The closing shall occur at the office of the City Attorney or any other location that is mutually agreeable to the Parties. The City shall execute the documents necessary to transfer title to the vehicles and shall execute any other documentation that is usual and customary for transactions of this type. The Contractor shall work with the City Attorney prior to the closing to ensure that all of the necessary paperwork is prepared in a timely manner. At the closing, the Contractor, or the entity taking title, shall use and deliver a cashier's check, wire transfer, or other source of readily available funds, to pay the full price of each vehicle that is being purchased. The Contractor's payment to the City shall be nonrefundable.

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SECTION 29: CONTRACTOR'S PERSONNEL

29.1 GENERAL REQUIREMENTS

The Contractor shall use competent, qualified, sober personnel to provide the services required by this Agreement. The Contractor shall devote sufficient personnel, time and attention to its operations under this Agreement to ensure that its performance will be satisfactory to the City.

29.2 DISTRICT MANAGER

Contractor shall appoint an employee to serve as the District Manager. The District Manager shall be the Contractor's primary point of contact with the City for all technical and administrative matters pertaining to this Agreement. The District Manager must have at least five (5) years of prior managerial experience providing Residential Collection Service for a community that is comparable in size to the City. The District Manager shall have the authority to make significant decisions relevant to the day-to-day operation of Contractor's program under this Agreement. The District Manager shall have direct access to the Contractor's management for resolving problems beyond the District Manager's authority. At all times during the term of this Agreement, the Director shall have immediate access to the District Manager by telephone (e.g., cellular telephone) and electronic mail. The District Manager shall be responsible for overseeing and implementing the Contractor's performance under this Agreement.

simultaneously. All calls concerning complaints shall be answered by a Person located in the Contractor's office in Miami-Dade County. The Contractor shall have extra staff working in the Contractor's office each Operating Day in August, September 2015 and in February, March 2016, and as long thereafter as necessary to ensure Contractor's compliance with the requirements in Sections 30.2, 31.1.4, and 31.1.5. The Contractor's local telephone number shall be listed in the Contractor's webpage and the two largest telephone directories in the City. Contractor shall use an answering machine or answering service to receive and record messages when the office is closed or the Contractor is receiving more calls than its staff can answer. The answering machine or service shall give Customers the telephone number that the Customers may use to report an emergency.

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- 30.4 The Contractor shall establish a process for receiving and handling emergency calls, both during and after normal operating hours. The Contractor's process shall ensure that a Customer receives an immediate response after reporting an emergency. Such process shall be subject to the Director's approval.
- 30.5 The Contractor's office shall be equipped with a two-way communication system that can be used to promptly contact the Director, the Contractor's District Manager, the Contractor's Field Supervisor, and all of the Contractor's Collection vehicles.
- 30.6 A sufficient number of Garbage Carts shall be stored at the Contractor's local office to ensure that the Contractor can satisfy the requirements in Section 27.3.2, above.

SECTION 31: CUSTOMER RELATIONS

31.1 HANDLING CUSTOMER COMPLAINTS

- 31.1.1 The Contractor shall be responsible for receiving all complaints and requests from Customers. If the Contractor receives a complaint or a request from a Customer, the Contractor shall enter the complaint or request into the Contractor's electronic tracking system pursuant to Section 31.1.4 or 31.1.5, as applicable, and then the Contractor shall promptly initiate its response to the complaint or request.
- 31.1.2 The District Manager or their designee shall determine initially whether a Customer's complaint is a Legitimate Complaint. If there is a dispute with the Customer or uncertainty, the Director shall make the final determination as to whether a Customer's complaint is a Legitimate Complaint. Legitimate Complaints include but are not limited to:
- Missed Collections;
 - Failure to respond to Missed Collections in compliance with the requirements of this Agreement;
 - Mishandling of Solid Waste or Collection Containers;
 - Failure to maintain vehicles, Collection Containers, or equipment;
 - Damage to public or private property;
 - Failure to pick up litter;
 - Failure to obey traffic regulations; and
 - Discourteous treatment of Customers.

- 31.1.3 The Contractor shall take whatever steps are necessary to promptly remedy the cause of a Legitimate Complaint. If the Contractor is informed about a Legitimate Complaint before noon on a Scheduled Collection Day, the Contractor shall remedy the complaint before the end of that day. If the Contractor is notified about a Legitimate Complaint after noon on a Scheduled Collection Day, or at any time on a Sunday or Holiday, the Contractor shall remedy the complaint before noon on the next Scheduled Collection Day. The Contractor may request and the Director shall grant additional time to remedy a Legitimate Complaint when the Contractor uses its best efforts to correct the problem, but is unable to do so within the time provided herein.
- 31.1.4 The Contractor shall establish a real-time, web-based system for tracking complaints. The Contractor shall enter all complaints into the Contractor's electronic tracking system within one hour after the Contractor receives the complaint; however, if complaints are received when the Contractor's local office is closed, the complaint shall be entered into the electronic tracking system within two (2) hours after the office reopens on the next Operating Day. The Contractor shall configure the system in a manner that allows the Director to (a) access the system and monitor the complaints from the City's computers, (b) identify the locations of the Customer complaints in real time on a street map, and (c) compare current and historical complaints, by type of complaint and by location. The Contractor's system shall be designed to provide immediate notice to the Director or the Director's designee when a complaint is entered into the Contractor's tracking system. However, the Director does not need the ability to enter or delete data in the electronic tracking system. The format of the information collected in the electronic tracking system shall be subject to the Director's approval. With the Director's approval, the electronic tracking system may be used as the Contractor's complaint log, pursuant to Section 34.2.5, below. This tracking system shall be fully operational no later than ~~July 27~~ October 28, 2015, pursuant to Section 6.2(i), above.
- 31.1.5 The Contractor shall establish a real-time web-based system for receiving and tracking a Customer's request for service. The Contractor's web-based system shall be designed to enable the Director and Customers to easily submit requests for service and receive prompt responses from the Contractor. The Contractor shall closely monitor such requests and shall provide initial responses no later than noon (12 p.m.) on the next Operating Day after receiving a request from a Customer or the City. The Contractor's system shall be designed to provide immediate notice to the Director or the Director's designee when a Customer submits a request to the Contractor. This tracking system shall be fully operational no later than ~~July 27~~ October 28, 2015, pursuant to Section 6.2(i), above.
- 31.1.6 With regard to the computer systems required pursuant to Sections 31.1.4 and 31.1.5, above, the Contractor is encouraged but not required to design its systems to enable Customers to view the current status of their complaints and requests on-line.

31.2 DISPUTE RESOLUTION PROCESS FOR CUSTOMERS

- 31.2.1 The Contractor shall promptly notify the Director whenever the Director needs to resolve a dispute between a Customer and the Contractor, including but not limited to disputes concerning the proper interpretation and implementation of this Agreement and the Ordinances. The Contractor also shall promptly notify the

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Complaints; and (f) the information compiled pursuant to Section 34.2.7, above. The first quarterly report shall be delivered to the Director in accordance with the following:

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- 34.3.2 The quarterly report shall include any information requested by the Director to enable the City to comply with Chapter 403, Florida Statutes, or other Applicable Laws concerning Solid Waste management programs or similar matters.
- 34.3.3 Whenever the Contractor submits a quarterly report to the City, the Contractor also shall submit a signed written statement from the District Manager or their designee, verifying that the quarterly report is accurate in all respects. The District Manager or their designee also shall verify each month that all of the Residential Waste collected by the Contractor has been delivered to a Designated Facility, (b) the Contractor has accurately informed each Designated Facility whether to bill the City for each Load delivered by the Contractor, and (c) the Contractor's quarterly report accurately accounts for all such deliveries.

34.4 ANNUAL REPORT

Contractor shall submit an annual report to the Director no later than forty-five (45) calendar days after the end of each Operating Year; however, an annual report is not required for the First Operating Year. At a minimum, the annual report shall include the following information: (a) annualized information for all items required in the quarterly reports; (b) updated lists of all vehicles and equipment used to provide Collection Service under this Agreement; (c) a description and inventory of the equipment, facilities, manpower, and other resources available for emergency conditions; (d) a trend analysis and overall evaluation of the number and types of Legitimate Complaints received by the Contractor on a monthly and annual basis during the term of this Agreement; (e) a corrective action plan for systemic and chronic problems, if any; (f) an updated Collection Plan; (g) an updated Contingency Plan; (h) an updated Safety Plan; (i) a summary of all accidents and Legitimate Complaints involving personal injuries or damage to public or private property in the Service Area during the prior year; and (j) a list of the vehicles, if any, that will be replaced in the upcoming year to comply with the requirements in Section 28.3 herein.

34.5 ACCIDENT REPORTS

Contractor shall notify the Director of any accidents involving the Contractor's staff, vehicles, or equipment that occur while the Contractor is performing services under this Agreement and require notification to OSHA or any other regulatory agency under Applicable Laws. Contractor also shall notify the Director of any accident involving personal injuries or damage to public or private property if such accident occurred while the Contractor was performing services under this Agreement. In all such cases, notice shall be provided via electronic mail within six (6) hours of the accident and a more complete written report shall be provided to the Director within one (1) Operating Day of the accident. If any issues are unresolved at that time, a subsequent report shall be provided to the Director within two (2) Operating Days following the ultimate disposition of the case. The initial notice and subsequent written reports shall include the date and time of the event, a description of the event, an estimate of the damages and injuries (if any) caused by the event, and a description of how the event and any associated damages and injuries were handled or will be handled.

34.6 CITY'S RIGHT TO INSPECT AND AUDIT CONTRACTOR'S RECORDS

Contractor shall cooperate with the Director and provide every reasonable opportunity for the City to ascertain whether the duties of the Contractor are being performed properly. Contractor shall promptly provide any information regarding the services provided by the Contractor under this Agreement, in addition to the information required explicitly by this Agreement, that the Director or the Contractor deem relevant under the circumstances.

The City shall have the right to inspect, copy, and audit, at the City's expense, all of the Contractor's records concerning the Contractor's services under this Agreement, except the Contractor's confidential personnel records and the Contractor's confidential profit and loss statements. The Contractor's records shall be made available for inspection in the City during normal business hours, or the records shall be submitted to the City in an electronic (digital) format, within five (5) Operating Days after the City requests the records.

34.7 PUBLIC'S RIGHT TO INSPECT CONTRACTOR'S RECORDS

The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes.

To the extent that the Contractor and this Agreement are subject to the requirements in Section 119.0701, Florida Statutes, the Contractor shall:

- (a) keep and maintain all records that ordinarily and necessarily would be required to be kept by the City in order to perform the services provided hereunder;
- (b) provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost specified in Chapter 119, Florida Statutes, or other laws;
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- (d) comply with all requirements for retaining public records and transfer, at no cost, to the City all records in the possession of the Contractor at the expiration or termination of this Agreement, and destroy all public records that are confidential and exempt from public records disclosure requirements.

If the Contractor fails to comply with the requirements in this Section 34.7, the City may enforce these provisions in accordance with the terms of this Agreement.

SECTION 35: PUBLIC NOTICES AND EDUCATIONAL SERVICES

The Contractor shall provide the following notices and educational services to help inform the public about the City's Solid Waste management system. The Contractor shall work closely with the City when preparing the notices, educational materials, and promotional information required pursuant to this Section 35. The design and content of the notices, educational materials, and promotional information shall be subject to the Director's prior approval. The Contractor shall be responsible for all expenses

Operating Days after the plan is revised by the Contractor. The Contingency Plan and all revisions to the plan are subject to the Director's approval.

37.5 CITY'S EMERGENCY MANAGEMENT MEETINGS

If requested by the Director, the Contractor shall attend the City's emergency management disaster preparedness meetings and shall provide the City with any materials that may be useful to the City's efforts, including but not limited to Collection schedules and routes. The Director shall notify the Contractor of the date, time, and location of the meetings, and shall identify any necessary materials that are to be provided by the Contractor.

SECTION 38: RATES FOR CONTRACTOR'S SERVICES

38.1 UNIFORM RATES FOR ALL COLLECTION SERVICES

The Rates in Exhibit 3 are the maximum amounts that the Contractor may charge for any Collection Services provided pursuant to this Agreement, except as provided in this Section 38. Contractor shall utilize the Rates in Exhibit 3, as adjusted pursuant to this Section 38, and no others, when billing the City under this Agreement.

The Rates shall be applied uniformly to all Customers receiving Residential Collection Services from the Contractor under this Agreement. The Rates for Residential Collection Service shall apply to each Customer that receives such service, regardless of whether the Customer uses a Garbage Can or a Garbage Cart for the Collection of the Customer's Garbage and Rubbish. The Rates for Residential Collection Service shall apply to each Customer, regardless of whether the Customer uses more than one Garbage Can to Set Out the Customer's waste.

The standard Rate for the Collection of Garbage will apply to each Customer that uses one ~~or two~~ (2) Garbage Carts. A Customer will pay an additional fee if the Customer uses two (2) ~~three~~ (3) Garbage Carts. The additional fee shall be equal to one-half of the Rate for the Collection of Garbage. The additional fee shall be applied again to a Customer's third ~~fourth~~ Garbage Cart, and to each additional cart. For example, if a Customer uses four (4) Garbage Carts, the Customer shall pay (a) the standard Rate for the Collection of Garbage, which will cover the cost of using one ~~two~~ (2) carts, plus (b) the Customer shall pay additional fees for three (3) ~~two~~ (2) carts and, therefore, the total amount paid will be two and one-half (2.5) times the standard Rate for the Collection of Garbage.

The tables in Exhibit 3 provide the Rates for a variety of different hypothetical scenarios. As noted in Section 19.4, below, the Rates will change if the City selects a new Designated Facility for Garbage and Rubbish, or Bulky Waste. The Rates also will change if the City eliminates the Annexed Area from the Service Area, pursuant to Section 4.1, below.

As of the Effective Date, the applicable Rates are as follows: (a) the Rate for Garbage Collection Service is set forth in Table A and it is \$10.08 per Dwelling Unit per month; (b) the Rate for Bulky Waste Collection Service is set forth in Table E and it is \$2.75 per Dwelling Unit per month; and (c) the Rate for Bulky Yard Waste Collection Service, plus disposal service, is set forth in Table I and it is \$1.83 per Dwelling Unit per month. The Rates for these services are based on providing Collection Service in the entire City, including the Annexed Area.

38.2 RATES FOR SUPPLEMENTAL COLLECTION SERVICES

~~The Contractor shall be solely responsible for processing, Recycling, marketing, selling, and disposing of the mulch that the Contractor produces from Bulky Yard Waste. The Contractor shall be solely responsible for paying all of the expenses the Contractor incurs for these activities, including but not limited to any expenses for the disposal of any Bulky Yard Waste or mulch that the Contractor cannot sell. The Contractor shall be entitled to retain all revenues it derives from the sale of Bulky Yard Waste and mulch. The City shall have no obligation to take or purchase any mulch from the Contractor.~~

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39.7 PAYMENTS FOR GARBAGE CARTS

The Contractor shall purchase the Garbage Carts that the Contractor will provide to Customers pursuant to Section 27 of this Agreement.

Pursuant to Section 27.3.2, the Contractor also shall purchase, assemble, deliver, and provide each Customer with one free replacement of their Garbage Cart ~~delivered to the Customer~~, if the Customer's cart is stolen, or damaged or worn beyond repair. Except for the initial carts and the replacement carts, the Contractor may charge a reasonable fee to a Customer that wishes to purchase a Garbage Cart. The Contractor's fee for purchasing and assembling a Garbage Cart for a Customer shall not exceed Fifty Dollars (\$50.00). ~~Except for the initial carts and the replacement carts,~~ The Contractor may charge an additional fee if the Customer requests the Contractor to deliver the Garbage Cart to the Customer's Residential Property, but the delivery fee shall not exceed Twenty-Five Dollars (\$25.00).

The Contractor shall be solely responsible for billing and collecting the fees for selling and delivering Garbage Carts pursuant to this Section 39.7. Except for the fees authorized in this Section 39.7, the Contractor shall not charge or collect any separate fee for purchasing, assembling, or delivering Garbage Carts to any Customer.

If a Customer purchases a Garbage Cart from the Contractor, the Contractor shall provide the Customer's name and address or parcel number to the Director within seven (7) days after such purchase.

39.8 PAYMENT FOR SUPPLEMENTAL COLLECTION SERVICES

The Contractor shall be solely responsible for billing its Customers and collecting the applicable Rates for any Supplemental Collection Services the Contractor provides pursuant to this Agreement. The Contractor also shall be responsible for the payment of all Tipping Fees associated with the disposal, processing, or Recycling of Solid Waste collected by the Contractor when providing Supplemental Collection Services.

39.9 SUSPENSION OF SERVICE FOR RESIDENTIAL CUSTOMERS

Collection Service shall be suspended temporarily if: (a) a Customer submits a written request to the Director and the Contractor to temporarily suspend Collection Service to the Customer's Dwelling Unit; (b) the Customer's request is received by the Director at least ten (10) days before the start of the period when Collection Service will be suspended; and (c) the suspension of Collection Service will be for a period of at least ninety (90) calendar days. The Contractor shall not bill the City and the City shall not pay the Contractor for Residential Collection Services if a Customer satisfies these requirements and the City's flow meters or records demonstrate that no water was consumed at the Customer's Dwelling Unit during the period when Collection Service was suspended. However, the procedure described in this Section 39.10 shall not be applicable

and Collection Service will not be suspended if the Residential Customer resides in a Dwelling Unit that is part of an apartment building, condominium, or other structure containing multiple Dwelling Units served by a single flow meter.

SECTION 40: PAYMENTS TO THE CITY

40.1 ADMINISTRATIVE COSTS

The Contractor shall pay an administrative fee to the City each Operating Month. The administrative fee is intended to reimburse the City for the administrative services provided by the City in connection with the City's implementation and administration of this Agreement. Each monthly payment shall be in the amount of Ten Thousand Dollars (\$10,000). The first monthly payment shall be delivered to the City no later than ~~August~~ November 20, 2015. Each subsequent payment shall be delivered to the City no later than the 20th day of the Operating Month.

40.2 CODE ENFORCEMENT SERVICES

The City will incur costs for the enforcement of the requirements in this Agreement. Accordingly, the Contractor shall pay Five Thousand Dollars (\$5,000) each Operating Month to off-set these costs. The first payment shall be delivered to the City no later than ~~August~~ November 20, 2015. Subsequent payments shall be delivered to the City no later than the 20th day of the Operating Month.

40.3 EXPENSES FOR PREPARATION OF AGREEMENT

The City has expended substantial amounts of staff time and has incurred significant out-of-pocket costs related to the preparation and negotiation of this Agreement pursuant to a public procurement process. The City's procurement process resulted in a direct economic benefit to the Contractor (i.e., the award of this Agreement). Accordingly, the Contractor shall reimburse the City for its costs and efforts by making a one time, lump sum payment of Two Hundred Fifty Thousand Dollars (\$250,000) to the City no later than ~~August~~ November 20, 2015.

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40.4 OPERATIONAL SUPPORT FOR TRANSITION TO PRIVATE SERVICE

The City will incur extraordinary costs during the first Operating Year because of the commencement of the Contractor's private services, the termination of the City's corresponding public services, and the reallocation of the City's equipment and personnel. Accordingly, the Contractor shall make a lump sum payment to the City in the amount of Five Hundred Thousand Dollars (\$500,000) no later than ~~August~~ November 20, 2015. The Contractor shall make a second lump sum payment in the amount of Five Hundred Thousand Dollars (\$500,000) no later than ~~August~~ November 20, 2016.

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40.5 OTHER PAYMENTS

The City shall submit invoices to the Contractor for any fee or charge that is due and owed to the City from the Contractor, except for the payments otherwise addressed in this Section 40. The Contractor shall pay the City's invoice within thirty (30) calendar days after the invoice is issued. Among other things, the Contractor shall pay the applicable usage fees for the use of the City's

vehicle washing facility or fueling facility, pursuant to Section 25, if the Contractor uses one or both of these facilities.

40.6 ANNUAL CPI ADJUSTMENTS FOR PAYMENTS

On October 1, 2016 and each anniversary thereafter, the amount of certain payments from the Contractor to the City shall be adjusted to reflect one hundred percent (100%) of any increase in the Consumer Price Index during the most recent twelve (12) month period extending from April 1 to March 31. The percentage change in the CPI shall be calculated in the manner described in Section 38.3, above.

The CPI adjustments described in this Section 40.6 shall apply to the payments made pursuant to Section 40.1 (Administrative Costs) and Section 40.2 (Code Enforcement Services).

40.7 RENT FOR CITY FACILITIES

The Contractor shall pay rent to the City for the Contractor's uses of the Equipment Yard, pursuant to Section 25.1, above. ~~The Contractor also shall pay rent to the City if the Contractor uses the Fleet Maintenance Building, pursuant to Section 25.7.~~ Rent shall be due, without demand, on the first Operating Day of each Operating Month.

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SECTION 41: RESERVED

SECTION 42: PAYMENT OF TIPPING FEES

Except as otherwise provided herein, the City shall pay the Tipping Fees associated with the disposal of the Residential Waste collected by the Contractor pursuant to this Agreement. However, the Contractor shall be solely responsible for and shall pay the Tipping Fees and other disposal costs for any Solid Waste that: (a) is collected from Commercial Property; (b) is collected outside of the Service Area; (c) is not Residential Waste; (d) is not collected pursuant to this Agreement; or (e) is collected by the Contractor when providing a Supplemental Collection Service, other than Side Door Service. The Tipping Fee is included in the Rates set forth in Exhibit 3, Tables C, D, G, H, and I.

SECTION 43: VERIFICATION OF PAYMENT AMOUNTS

- 43.1** The City's acceptance of any payment from the Contractor, or the City's deduction of any amount from any payment due to the Contractor, shall not be construed as an accord that the amount paid is the correct amount, nor shall it be construed as a release of any claim the City may have for additional sums payable from the Contractor.
- 43.2** At any time within the applicable statute of limitations, the City may recalculate and collect any amounts that are payable to the City under this Agreement, plus Interest, and all costs of collection, including attorneys' fees and court costs.
- 43.3** At its expense, the City may inspect, copy and audit any books, records and documents of the Contractor, whether kept in an electronic (digital) format or otherwise, that are relevant to the calculation of the amounts due and payable under this Agreement.

SECTION 44: ADMINISTRATIVE CHARGES

44.3 ADMINISTRATIVE CHARGES BEFORE COMMENCEMENT DATE

The Director shall impose administrative charges for Contractor's actions during the Transition Period in the amounts set forth in Sections 44.3.1 through 44.3.5, below:

- 44.3.1 Failure to provide purchase orders or other documentation to the City by June 15/September 1, 2015, confirming that all necessary Collection vehicles and equipment have been ordered and will be delivered to the Contractor's equipment yard or the City's Equipment Yard no later than July/August 15, 2015. For each calendar day of delay, Two Thousand Dollars (\$2,000) shall be assessed against the Contractor.
- 44.3.2 Failure to mail or deliver the City-approved notices, brochures, and informational materials to a Customer by July 25/October 10, 2015. For each calendar day of delay, Twenty-Five Dollars (\$25) per Customer shall be assessed against the Contractor, but the maximum assessment shall not exceed Three Thousand Dollars (\$3,000) per calendar day.
- 44.3.3 Failure to have the necessary Collection vehicles delivered to the Contractor's equipment yard and ready for service (e.g., registered, licensed, and tagged) by July 20/October 19, 2015. For each calendar day of delay, Four Thousand Dollars (\$4,000) shall be assessed against the Contractor.

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The requirements in Sections 44.3.1 and 44.3.3 do not apply to vehicles that will be purchased by the Contractor from the City.

44.4 ADMINISTRATIVE CHARGES DURING TERM OF AGREEMENT

On the Commencement Date and throughout the remainder of the term of the Agreement, the Director shall assess administrative charges as follows:

- 44.4.1 Failure to clean up Solid Waste, litter, or other material in compliance with the requirements in this Agreement, within the deadlines set forth herein, after receiving oral notification by the Director or a Customer. Each failure shall result in the imposition of a One Hundred Fifty Dollar (\$150) assessment per day per occurrence.
- 44.4.2 Failure to collect the Garbage, Rubbish, Yard Waste, or Bulky Waste that was properly Set Out for Collection by a Customer on the Scheduled Collection Day, within the deadlines set forth herein, after receiving oral notification by the City or Customer. Each failure shall result in the imposition of a One Hundred Dollar (\$100) assessment per occurrence. After the initial violation, if the Contractor fails to meet the deadlines contained in this Agreement, each additional Operating Day of delay shall result in the imposition of an additional assessment of Two Hundred Fifty Dollars (\$250).
- 44.4.3 Failure to complete a route on the Scheduled Collection Day, within the deadlines set forth herein, after receiving oral notification by the City or the Customer. A route shall be considered incomplete if five (5) or more Dwelling Units or two (2) or more streets or roadways are not provided Collection Service. Each failure shall result in an assessment of One Thousand Dollars (\$1,000) per route, per Operating

- 44.4.25 Failure to adhere to an approved route in the Collection Plan, without receiving the Director's prior approval for the deviation. Each failure shall result in an assessment of Five Hundred Dollars (\$500) per route per occurrence.
- 44.4.26 Failure to display the Contractor's name, telephone number, and identification number on a Collection vehicle in the manner specified herein, shall result in an assessment of One Hundred Dollars (\$100) per occurrence per Operating Day.
- 44.4.27 Failure to cover or enclose Solid Waste in the Contractor's Collection vehicles, as required herein, shall result in an assessment of Two Hundred Fifty Dollars (\$250) per occurrence.
- 44.4.28 Failure to return a Collection Container to the location where the Customer placed it for Collection shall result in an assessment of Fifty Dollars (\$50) per occurrence.
- 44.4.29 Failure to respond to a Customer's request for service within the deadlines set forth in Section 31.1.5, shall result in the imposition of an assessment of Fifty Dollars (\$50) per occurrence.
- 44.4.30 Failure to clean up spilled liquids, including but not limited to leachate, oil, and hydraulic fluids, within the deadlines set forth in Section 20.6, shall result in the imposition of an assessment of Five Hundred Dollars (\$500) per occurrence for each Operating Day of delay.

44.5 ADMINISTRATIVE CHARGES BEFORE AUTOMATION DATE

In addition to the administrative charges imposed pursuant to Sections 44.3 and 44.4, the Director shall impose administrative charges for Contractor's actions during the period prior to the Automation Date in the amounts set forth in Sections 44.5.1 through 44.5.4, below.

- 44.5.1 Failure to provide purchase orders or other documentation to the City by ~~September 15, 2016~~ ~~January 13, 2016~~, confirming that all necessary Collection vehicles and Garbage Carts have been ordered and will be delivered to the Contractor's Equipment Yard or the City's Equipment Yard no later than ~~January 8, 2016~~ ~~February 15, 2016~~. For each calendar day of delay, Two Thousand Dollars (\$2,000) shall be assessed against the Contractor.
- 44.5.2 Failure to have the necessary Collection vehicles and Garbage Carts delivered to the Contractor's equipment Yard or the City's Equipment Yard by ~~January 8, 2016~~ ~~February 15, 2016~~. For each calendar day of delay, Four Thousand Dollars (\$4,000) shall be assessed against the Contractor.
- 44.5.3 Failure to mail or deliver the City-approved brochures and informational materials to a Customer by ~~January 25, 2016~~ at least seven (7) days before the Contractor begins to provide Automated Collection Service to that Customer. For each calendar day of delay, Twenty-Five Dollars (\$25) per Customer shall be assessed against the Contractor, but the maximum assessment shall not exceed Three Thousand Dollars (\$3,000) per calendar day.
- 44.5.4 Failure to deliver one (1) new Garbage Cart by ~~January 27, 2016~~ ~~March 23, 2016~~, to each Customer that will receive Collection Service with a Garbage Cart. For each

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Customer that does not receive a cart by January 27th 2016, Fifty Dollars (\$50) shall be assessed against the Contractor. An additional Fifty Dollars (\$50) shall be assessed per Customer for each additional calendar day of delay.

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SECTION 45: PAYMENTS WITHHELD FROM CONTRACTOR

In addition to the remedies provided elsewhere in this Agreement, the City may withhold part or all of any payment otherwise due the Contractor from the City if the Director concludes that the Contractor's actions or inactions have resulted in the following:

- (a) The Contractor's failure to carry out lawful instructions or orders from the Director, when required by this Agreement;
- (b) Failure of the Contractor to make payments to any subcontractor, which results in a claim against the City;
- (c) Unsafe working conditions allowed to persist by the Contractor, after receiving notice from the City or OSHA;
- (d) Failure of the Contractor to provide routes, schedules, data, documents or reports requested by the City in compliance with this Agreement; or
- (e) Failure to pay an administrative charge when due.

If the foregoing problems are corrected, payment shall be made promptly to the Contractor for the amounts withheld, but the City shall not be liable to the Contractor for interest on any delayed payment. The Director shall not exercise the City's right to withhold payments under this Section 45 unless the Director concludes that such action is reasonable and necessary in light of the Contractor's repeated problems or persistent failure to perform in compliance with the requirements herein. The City shall not withhold more than a total of Fifty Thousand Dollars (\$50,000) from any single payment.

SECTION 46: NO LIABILITY FOR DELAYS OR NON-PERFORMANCE DUE TO FORCE MAJEURE EVENTS

- 46.1 If the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure.
- 46.2 The Contractor shall not be entitled to compensation from a Customer or the City for such period of time as the delay or non-performance shall continue, but the Contractor will be entitled to pro-rata compensation after the Contractor's work has been completed. The City shall not be liable for any loss suffered by Contractor as a result of an event of force majeure.
- 46.3 An event of "force majeure" shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

47.1.16 Voluntary Bankruptcy

Written admission by a Party that it is bankrupt; or filing by a Party of a voluntary petition under the Federal Bankruptcy Act; or consent by a Party to the court appointment of a receiver or trustee for all or a substantial portion of its property or business; or the making of any arrangement by a Party with, or for the benefit of, its creditors or assigning to a trustee, receiver, or similar functionary (regardless of how designated) all or a substantial portion of a Party's property or business; or by becoming insolvent.

47.1.17 Involuntary Bankruptcy

Final adjudication of a Party as bankrupt under the Federal Bankruptcy Act.

47.1.18 Public Entity Crime

The Contractor is placed on a convicted vendor list following a conviction for a public entity crime; or

47.1.19 Fraud

The Contractor commits an act or omission constituting fraud, gross negligence, misfeasance or willful malfeasance toward the City.

47.2 HABITUAL VIOLATIONS

If the Contractor frequently, regularly, or repetitively fails to comply with its obligations and requirements under this Agreement, the City may conclude that the Contractor is a "habitual violator," regardless of whether the Contractor has corrected each individual failure of performance or paid administrative assessments for such failures of performance. In such circumstances, the Contractor shall forfeit the right to receive any further notice or grace period to cure its failures of performance, and all of the prior defaults under this Agreement shall be considered cumulative and collectively shall constitute a condition of irredeemable default. If the Council concludes the Contractor is a habitual violator, the City shall issue a final warning to the Contractor, citing the grounds for the warning, and any single default by the Contractor thereafter shall be grounds for immediate termination of this Agreement. If any subsequent default occurs, the Council may terminate this Agreement after giving written notice to the Contractor. The termination shall be effective upon the date designated by the Council.

47.3 INTERIM OPERATIONS

In the event that this Agreement is terminated before the end of any term, the Contractor shall continue its operations for an interim period of up to one hundred eighty (180) calendar days (i.e., six (6) months) if requested to do so by the City. The Contractor shall be paid for its services during said interim period at the rates in effect prior to issuance of the notice of termination.

Notwithstanding anything else contained herein, the City may hire an alternate Person to provide Collection Services in the City if the Contractor fails to provide Collection Service for a period of two (2) consecutive Operating Days. The City's interim service provider shall continue to provide Collection Service until the Contractor demonstrates to the City's satisfaction that the Contractor is able to resume work in compliance with the requirements in this Agreement.

the Director and it shall describe the Contractor's proposed solution for resolving the dispute. The Director and the Mayor may request, and the Contractor shall timely provide, any additional information that is reasonably necessary to evaluate the disputed issue and the Contractor's proposal. The Mayor shall fully and fairly consider the Contractor's proposal in a timely manner. Upon request, the Mayor shall meet with the Contractor and discuss its proposal. If the Mayor rejects the Contractor's proposal in whole or in part, the Contractor may present its proposal to the Council at a duly noticed public meeting or pursue any other dispute resolution mechanism, subject to the provisions in this Section 49.

SECTION 50: CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT

50.1 CONTINUATION OF CONTRACTOR'S SERVICE

If the City does not exercise its right to renew this Agreement or if there are no renewal options remaining, the City will attempt to award a new agreement to a Person at least six (6) months prior to the expiration of this Agreement. In the event a new agreement has not been awarded within such time frame, Contractor shall provide Collection Services to the City for an additional ninety (90) calendar days (i.e., 3 months) after the expiration of this Agreement, at the then current Rates, if the City requests this service.

50.2 SCHEDULE FOR TERMINATION OF CONTRACTOR'S SERVICE

Prior to the termination of this Agreement, Contractor shall work with the City to ensure that there is no interruption or reduction of service when the Contractor ends its services to the City. If a new franchise agreement is awarded to a Person other than the Contractor, the Contractor shall coordinate and cooperate with the newly selected franchise hauler, as well as the City, to minimize any disruptions in the service provided to the public.

50.3 CITY'S RIGHT TO PROCURE NEW SERVICES

At any time, the City may issue a request for proposals, or commence negotiations with a Person other than the Contractor, or take any other action deemed necessary by the City to obtain the services of a Person who will collect Solid Waste for the City after this Agreement expires or is terminated.

SECTION 51: DAMAGES AND INDEMNIFICATION

51.1 LIABILITY

The Contractor shall be liable for all injuries and conditions that are caused by or result from the Contractor's actions, including but not limited to the Contractor's failure to perform in accordance with the terms of this Agreement. To the extent that the City and Contractor are joint tortfeasors, losses shall be apportioned in the manner described in Section 51.3, below.

51.2 CONTRACTOR'S INDEMNIFICATION OF CITY

To the greatest extent allowed by Applicable Law, the Contractor releases and shall indemnify, hold harmless, and, if requested by the City, defend, each City Indemnified Party from and

51.5 NO PERSONAL LIABILITY

Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent or representative of the City or the Contractor.

51.6 COLLECTION OF OVERDUE PAYMENTS AND INTEREST

If the Contractor fails to pay any rent or other amount that is owed to the City under this Agreement, the Contractor shall pay Interest on the outstanding debt and the Contractor shall pay any expenses the City incurs in its efforts to recover the unpaid debt. Interest shall begin to accrue on the first calendar day after the payment is due and it shall compound daily. The Contractor's liability for expenses shall include but not be limited to any court costs, filing fees, witness fees, and attorneys' fees that the City incurs in any civil, administrative, or appellate proceeding in which the City is the prevailing party.

SECTION 52: CONTRACTOR'S INSURANCE

The Contractor shall provide and maintain, on a primary basis and at its sole expense, at all times after the ~~Effective~~Commencement Date until this Agreement expires or terminates, policies of insurance that insure the Contractor against any and all claims, demands, or causes of action for injuries received or damages to people or property caused by or resulting from the Contractor's acts and omissions under this Agreement. At a minimum, the Contractor shall maintain at all times the following insurance coverage, with the limits and endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by the Contractor, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

52.1 COMMERCIAL GENERAL LIABILITY

Contractor shall maintain Commercial General Liability with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/\$2,000,000
Products – Completed Operations	\$2,000,000
Personal and Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Contractual Liability	Included

The General Liability insurance form shall be no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent, without restrictive endorsements. Coverage shall not contain any endorsement(s) excluding nor limiting Products/Completed Operations, Contractual Liability or Cross Liability beyond those included in the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) or equivalent. The coverage shall include: (1) Bodily Injury and Property Damage; (2) Premises and Operations; (3) Independent Contractors; (4) Products and Completed Operations; (5) Broad Form or equivalent Contractual Coverage applicable to the Agreement and consistent with the indemnification and hold harmless provisions in the Agreement; (6) Broad Form or equivalent Property Damage Coverage; and (7) Personal Injury Coverage with employment and contractual exclusions removed and deleted.

52.2 BUSINESS AUTOMOBILE LIABILITY

The Contractor shall be responsible for all of its subcontractors (if any) and their insurance. Each subcontractor shall provide certificates of insurance to the Contractor that demonstrate coverage and terms in compliance with the requirements applicable to the Contractor.

Neither approval by the City of any insurance supplied by the Contractor or a subcontractor, nor a failure to disapprove such insurance, shall relieve the Contractor or any subcontractor of their responsibility for liability, damages, and accidents as set forth herein.

SECTION 53: PERFORMANCE BOND

The Contractor shall furnish to the City an irrevocable, annually renewable, Performance Bond for the faithful performance of this Agreement and all of the Contractor's obligations hereunder. The form and content of the Performance Bond shall be substantially the same as the draft bond in Exhibit 5, and shall be subject to the approval of the City. The Performance Bond shall be issued by a surety company that is acceptable to the City. At a minimum, the surety company shall be rated "A" or better as to management and "FSC X" or better as to strength by Best's Insurance Guide or Surety, and shall be listed on the U.S. Treasury Department's list of acceptable sureties for federal bonds. The Surety shall have been in business and have a record of successful and continuous operation for at least five years. The Performance Bond shall: (a) contain any provisions required by Applicable Law; (b) guarantee the performance of the Agreement; and (c) not be canceled or altered without at least thirty (30) calendar days prior notice to the City. The Contractor shall furnish the Performance Bond to the City at least five (5) calendar days before the Effective Date. The Performance Bond shall be maintained in full force and effect at all times during the term of this Agreement.

Initially, the Performance Bond shall be in an amount that is equal to fifty ~~not less than one hundred~~ percent (4050%) of the total amount of the City's payments to the Contractor for Collection Services under this Agreement during the ~~First Operating Year beginning on October 1, 2015.~~ The annual value of the Contractor's Collection Services shall be estimated by the Director, based on the Contractor's Rates. The Director, in his or her sole discretion, may authorize the Contractor to reduce the amount of the Performance Bond to an amount that is less than fifty percent (50%) of the total annual cost of the Contractor's Collection Service. The reduction in the Performance Bond may occur at any time designated by the Director, effective on or after October 1, 2016. The reduction shall be approved by the Director only if the Contractor is in substantial compliance with all of the requirements in this Agreement. Subject to the same conditions and limitations, the Director may approve a further reduction in the amount of the Performance Bond, effective on or after October 1, 2017. However, the amount of the Performance Bond shall not be reduced to a level that is less than twenty-five percent (25%) of the total annual amount of the Contractor's Collection Services under this Agreement.

Maintenance of the Performance Bond and the performance by the Contractor of all of the obligations under this section shall not relieve the Contractor of liability under the default and termination provisions set forth in this Agreement or from any other liability resulting from any breach of this Agreement. The Performance Bond may be "called" and used if there is any default or breach of this Agreement by the Contractor. Calling or using the Performance Bond shall not restrict or preclude the use of any additional or other remedies available to the City against the Contractor for breach, default or damages.

In the event of a strike of the employees of Contractor or any other labor dispute which makes performance of this Agreement by the Contractor substantially impossible, the City shall have the right to call the Performance Bond three (3) days after giving notice and may engage another Person to provide necessary services.

paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect. This Agreement shall be construed as if such invalid, illegal, void or unenforceable provision had never been contained herein.

SECTION 71: FAIR DEALING

The Contractor declares and warrants that the Contractor enters into this Agreement without reliance on or engaging in any collusion, bribery or fraud, that all of the Contractor's representations in this Agreement are made fairly and in good faith, and that no Council member, City officer, or City employee, directly or indirectly owns more than five percent (5%) of the total assets or capital stock of the Contractor, nor will any such Person directly or indirectly benefit by more than five percent (5%) from the profits or emoluments of this Agreement, nor has the Contractor provided any gift to any such Person or their family in violation of Applicable Law. The Contractor warrants that it has not employed or retained any company or Person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and the Contractor has not paid or agreed to pay any Person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this Agreement. Further, the Contractor declares and warrants that none of the agents, members, managers, partners, officers, directors, employees, or executives of the Contractor, or any affiliate that is active in the management of the Contractor, has been convicted of a public entity crime, as defined in Section 287.133(g), Florida Statutes.

SECTION 72: SOVEREIGN IMMUNITY

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes.

SECTION 73: REMEDIES NOT EXCLUSIVE

The remedies specified in this Agreement shall supplement, and not be in lieu of, any other remedies provided at law or in equity. The payment of any administrative charges by the Contractor shall not constitute a defense for the Contractor, nor an election of remedies by the City, nor serve as the basis for a claim of estoppel against the City, nor prevent the City from terminating this Agreement. The City's decision to refrain from assessing administrative charges, or suspending or terminating this Agreement, or seeking any other relief from any failure in the Contractor's performance, shall not constitute a waiver of the City's right to pursue any other remedy or a waiver of its right to pursue a remedy for any future failure by the Contractor. No remedy conferred by this Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

SECTION 74: NOTICES TO PARTIES

All notices, requests, authorizations, approvals, protests, and petitions provided for herein shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered or (b) mailed by registered or certified mail (postage prepaid), return receipt requested, ~~or (c) sent by telecopy.~~ The

Facsimile:

SECTION 75: CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- (a) The Contractor is a corporation existing in good standing under the laws of the state of its formation, is in good standing under the laws of the State of Florida, and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.
- (b) The Contractor has the requisite power, authority, and legal right to enter into and perform its obligations under this Agreement and possesses all orders, permits, consents, licenses, approvals, franchises, certificates, registrations, and other authorizations from third parties and governmental authorities that are necessary to conduct its current business and to satisfy its duties and obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by the Contractor and, as of the Effective Date, constitutes a legal, valid, and binding obligation of the Contractor, enforceable by the City against the Contractor in accordance with its terms, except to the extent its enforceability is limited by (1) the application of general principles of equity and by bankruptcy, insolvency, moratorium, debtor relief, and similar laws of general application affecting the enforcement of creditor rights and debtor obligations, and (2) public policy limitations on the enforceability of indemnification provisions.
- (d) The execution, delivery, and performance of this Agreement by the Contractor: (1) have been duly authorized; (2) do not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained after the Effective Date; (3) have been duly authorized by all requisite action of the Contractor, and no other proceedings on the part of the Contractor, its officers, partners or managers are necessary to authorize this Agreement or to perform the duties and obligations of the Contractor contemplated by it; (4) will not violate any law applicable to the Contractor or its property or any provisions of the Contractor's partnership agreement; (5) do not constitute a default under or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the Contractor under any agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound or affected in any manner that prohibits or otherwise adversely affects the Contractor's ability to perform its obligations under this Agreement; and (6) do not and will not violate any copyrights, patents, or other intellectual or proprietary rights of any Person.

- (e) To the best of the Contractor's information and belief, there is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority pending against the City or the Contractor, in which an unfavorable decision, ruling, or finding would materially and adversely affect the performance by the Contractor of its obligations under this Agreement, or that in any way would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor or any of its affiliates in connection with this Agreement.
- (f) The Contractor acknowledges that Section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of \$1,000,000 or more, that are on either the Scrutinized Companies with Activities in the Sudan List and or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, both lists of which are created pursuant to Section 215.473, Florida Statutes, and certifies, represents, and warrants to the City that the Contractor is not on either of those lists.
- (g) The Contractor is not listed on Miami-Dade County's List of Debarred Contractors.

SECTION 76: DISPOSAL SERVICES

Pursuant to the City's RFP, the City may elect to have the Contractor collect and dispose of the City's Garbage, Rubbish, and Bulky Waste. If the City elects to have the Contractor provide these disposal services in addition to Residential Collection Service, the Contractor shall comply with the requirements set forth in Exhibit 15, which is attached hereto. The provisions in Exhibit 15 supplement and amend the provisions in this Agreement.

The provisions of this Section 76 and Exhibit 15 shall have no force and effect if (a) the Contractor did not offer to provide Solid Waste disposal services in its proposal to the City or (b) the City failed to timely accept the Contractor's offer to provide such services. For the purposes of this Section 76, the City's acceptance of the Contractor's offer must be delivered in writing to the Contractor no later than December 31, 2015.

SECTION 77: ~~SECTION 77:~~ ADDITIONAL BENEFITS AND SERVICES

In addition to the Contractor's other obligations under this Agreement, the Contractor shall donate at least Fifty Thousand Dollars (\$50,000) in cash and/or in-kind services each Operating Year for the benefit of the City and its residents. The Contractor shall have the exclusive authority to determine how it will make its donations. Among other things, the Contractor may: (a) establish an annual internship for high school students that live in Hialeah and wish to learn about the Solid Waste and Recycling industry at the Contractor's facilities; (b) provide monetary support for the City's youth athletic leagues; (c) conduct educational tours of the Contractor's Recycling facilities; (d) make educational presentations for homeowners associations in the City; and (e) make educational presentations in the schools in the City.

No later than October 15 of each Operating Year, the Contractor shall give the Director a written description of the donations the Contractor made in the prior Operating Year to comply with the requirements in this Section 77. If the Contractor fails to demonstrate to the Director's reasonable satisfaction that the Contractor has satisfied/complied with its obligations under this Section 77, the City, and the Contractor shall work together to identify mutually acceptable programs or activities that the Contractor will fund or otherwise support to (a) eliminate any shortfall in the Contractor's prior donations

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and (b) ensure that there are no shortfalls in the Contractor's future donations.

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IN WITNESS WHEREOF, the Parties have made and executed this Agreement, as attested to by the signature of their duly authorized officers or representatives and their official seals affixed hereon, the day and year first above written.

Attest:

CITY OF HALEAH, by and through its
City Council

Marbelys Fatjo, City Clerk

By: _____
Carlos Hernandez, Mayor
day of _____, 2015

Approved as to form and legal sufficiency

By: _____
Lorena Bravo, City Attorney

_____ day of _____, 2015

(CITY SEAL)

WITNESSES:
FLXYZ COMPANY,

PROGRESSIVE WASTE SOLUTIONS OF
INC.

Signature

By: _____

Signature

Printed Name

Printed Name and Title

____ day of _____, 2015

____ day of _____, 2015

Signature

Printed Name

____ day of _____, 2015

ATTEST:

SECRETARY

STATE OF FLORIDA)
) SS:
CITY OF)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of Progressive Waste Solutions of ~~FLXYZ Company~~, Inc., an organization authorized to do business in the State of Florida, and he/she executed the foregoing Agreement as the proper official of _____ for the uses and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and City aforesaid on this _____ day of _____, 2015.

NOTARY PUBLIC

My Council Expires:



Gardner, Bist, Bowden, Bush,
Dee, LaVia & Wright, P.A.
ATTORNEYS AT LAW

1300 Thomaswood Drive
Tallahassee, Florida 32308

Michael P. Bist
Garvin B. Bowden*
Benjamin B. Bush
David S. Dee

Telephone
850.385.0070

www.gbwlegal.com

Facsimile
850.385.5416

Erin W. Duncan
Charles R. Gardner
John T. LaVia, III
Robert Scheffel "Scheff" Wright
*Board Certified Real Estate Lawyer

August 4, 2015

Lorena Bravo
City Attorney
City of Hialeah
501 Palm Avenue, 4th Floor
Hialeah, FL 33010

Re: Hialeah's Franchise Agreement with Progressive

Dear Ms. Bravo:

The City of Hialeah ("City") hired this law firm to assist the City with its efforts to select a private company to collect the City's solid waste. In our capacity as outside counsel, we helped prepare the City's Request for Proposals ("RFP") for Solid Waste Collection Services (RFP No. 2014-15-9500-00-002). The RFP included a draft Exclusive Franchise Agreement ("Agreement").

On June 23, 2015, the City Council unanimously selected Progressive Waste Solutions of FL, Inc. ("Progressive"), pursuant to the City's RFP. The City Council also approved the first reading of an ordinance awarding the draft Agreement to Progressive. The second reading of the ordinance is scheduled to occur on August 11, 2015.

At your request, we have prepared this letter, which summarizes some of the key provisions in the draft Agreement with Progressive. This letter will give you and the City Council a general overview of the Agreement. We encourage you and the City Council to review the entire Agreement carefully to ensure that it is consistent with the City's desires.

I. GENERAL SCOPE OF PROGRESSIVE'S SERVICES

The Agreement gives Progressive the exclusive right to collect Residential Waste¹ (i.e., Garbage, Rubbish, Bulky Waste, and Bulky Yard Waste) in the City.²

Section 5 of the Agreement contains a general description of the services that will be provided by Progressive. Subject to many conditions, Section 5 requires Progressive to perform the following tasks:

- (a) Beginning on November 1, 2015, Progressive will use Garbage Cans to collect all of the Residential Waste generated in the City;
- (b) Before March 28, 2016, Progressive will provide a new Garbage Cart to each residence that will receive Automated Collection Service;
- (c) Beginning no later than March 28, 2016, Progressive will use Garbage Carts to collect Garbage from the City's residents;
- (d) Progressive will deliver all of the City's Residential Waste to the disposal facilities designated by the City (e.g., Miami-Dade County's Resources Recovery Facility);
- (e) Progressive must comply at all times with the requirements in the Agreement and Applicable Law;
- (f) Progressive must provide all labor, services, supervision, materials, and equipment necessary to accomplish its tasks under the Agreement; and

¹ The capitalized words and phrases in this letter are defined in Section 1 of the Agreement.

² The Agreement does not authorize or require Progressive to provide service to (a) commercial businesses or (b) people that reside in large apartment buildings, where the Garbage is collected in a dumpster or other large Mechanical Container.

- g) Progressive must perform all of its work under the Agreement at its own expense, in exchange for the payments authorized by the Agreement.

II. SPECIFIC REQUIREMENTS UNDER THE AGREEMENT

The Agreement contains a relatively comprehensive and detailed set of requirements concerning the collection of the City's Residential Waste. The following paragraphs summarize some of the major requirements. The footnotes identify the specific sections of the Agreement where these requirements are discussed.

A. Level of Service

Progressive will provide the same level of service that the City's staff currently provides when collecting Residential Waste. More specifically, Progressive shall:

- (1) collect Garbage and Rubbish two (2) times each week;³
- (2) collect Bulky Waste (e.g., furniture; mattresses; other large items) once each month;⁴ and
- (3) collect Bulky Yard Waste (e.g., large tree limbs) once each month.⁵

The Agreement does not limit the quantity of Garbage, Bulky Waste, or Bulky Yard Waste that a resident may place at the curb for collection by Progressive.⁶

B. Automated Collection Service

The City's goal is to provide Automated Collection Service to all of the City's residents. Progressive has inspected the City's neighborhoods and Progressive is hopeful that it can provide Automated Collection Service to all of the residents that currently use a Garbage Can. However, the City's Staff recognizes that it may not be possible to use automated

³ Section 7.1.1.

⁴ Section 7.1.5.

⁵ Section 7.1.6.

⁶ Sections 7.1.2, 7.1.3, 7.2.1, and 7.3.1.

collection vehicles in certain areas where there are narrow or dead-end streets.⁷ In these areas, Progressive may need to continue to provide manual Collection Service with Garbage Cans throughout the term of the Agreement.

C. New Garbage Carts for Residents

Before March 28, 2016, Progressive shall provide a new Garbage Cart to each residence that will receive Automated Collection Service.⁸ Each Garbage Cart will be approximately 96-gallons in size.⁹ One Garbage Cart will be provided without charge.¹⁰ A replacement cart also will be provided, without charge, if a resident's cart is stolen or damaged.

If a resident wishes to use more than one Garbage Cart, the resident must purchase the extra carts from Progressive.¹¹ Progressive may not charge more than \$50 for a cart.¹² Progressive may not charge more than \$25 to deliver a cart.

If a Customer uses more than one cart, the City must pay an additional waste collection fee to Progressive. An additional fee will be paid for each additional cart that is used by the Customer (e.g., if a Customer uses three carts, the City will have to pay an additional fee to Progressive for two carts). The additional fee for each additional cart will be equal to one-half of the normal fee for Garbage collection.¹³

D. Garbage Must be Placed in a Cart

When a resident receives Automated Collection Service, the resident must place all of their Garbage inside their Garbage Cart.¹⁴ Progressive is not required to collect bags of Garbage that are placed on the ground next to a Garbage Cart. However,

⁷ See Exhibit 1.

⁸ Sections 5(d) and 27.1.2.

⁹ Section 27.5.1; see also Exhibit 6 to Agreement. The capacity of a typical Garbage Can is approximately thirty-two (32) gallons. Thus, a Garbage Cart will hold the same amount of Garbage as three (3) typical Garbage Cans.

¹⁰ Sections 27.1.2 and 39.7.

¹¹ Sections 27.1.2 and 39.7.

¹² Section 39.7.

¹³ Section 38.1.

¹⁴ Section 7.1.3.

if Progressive does not collect all of the waste that is set out at the curb by the Customer, Progressive must leave a notice informing the Customer why the material was not collected.¹⁵

E. Routes and Schedules

When Progressive begins to provide its Collection Service on November 1, 2015, Progressive will use the same routes and schedules that the City currently uses.¹⁶ The City currently collects Residential Waste four days each week (Monday, Tuesday, Thursday, and Friday) and Progressive will do the same. However, when Progressive begins to provide Automated Collection Service in March 2016, Progressive will develop new routes and schedules, because Progressive will collect Residential Waste six days each week (Monday through Saturday).

F. Educational Notices for the Public

Progressive must provide an educational notice to each Customer at least one week before Progressive begins to provide its Collection Service on November 1, 2015.¹⁷ Progressive also must provide an educational notice to each Customer at least one week before Progressive begins to provide Automated Collection Service with Garbage Carts in March 2016.¹⁸ Further, Progressive must provide annual notices to each Customer, beginning in January 2017.¹⁹ These notices will identify the days when the Customer will receive service. The notices also will summarize the requirements for properly placing Residential Waste at the curb for collection by Progressive. These notices will be prepared by Progressive, but they are subject to the City's review and approval.

G. Progressive's Collection Vehicles

Progressive will lease and use new vehicles to provide manual Collection Service with Garbage Cans. Progressive will buy new vehicles to provide Automated Collection Service with Garbage Carts. Under the Agreement, none of the collection

¹⁵ Section 15.1.

¹⁶ Sections 9.1 and 9.2.

¹⁷ Section 35.1.

¹⁸ Section 35.2.

¹⁹ Section 35.3.

vehicles may be more than seven years old, except for spare or reserve vehicles.²⁰

Progressive's front-line collection vehicles will be painted white and they will look like the City's collection vehicles.²¹ However, spare or reserve vehicles that only are used in the City on a temporary basis do not need to be painted white.

The City will have the right to inspect Progressive's vehicles at any time.²² The City may require Progressive to immediately clean, wash, paint or repair any Collection vehicle.²³

The City will sell fifty-five (55) of its waste collection vehicles to Progressive.²⁴ The sales price for the vehicles was established by the City, based on the City's estimate of the fair market value for the vehicles. The sale of the City's vehicles will generate approximately \$807,000 for the City.

H. Collection Service for City Facilities and Community Events

Progressive will collect all of the Garbage and Rubbish generated in the City's buildings, parks, and facilities.²⁵ Each year Progressive also will provide Collection Services for six (6) Community Events, such as community clean-ups, parades, and other special events in the City.²⁶

I. Payments to Progressive

The City will pay Progressive on a monthly basis for the services Progressive provides.²⁷ The Rates for Progressive's services will be fixed until October 1, 2016. On October 1, 2016 and each October 1 thereafter, the "collection component" of the Rates will be adjusted, based on changes in the Consumer

²⁰ Section 28.3.

²¹ Section 28.7.3.

²² Section 28.9.1.

²³ Section 28.9.2.

²⁴ Section 28.11; see also Exhibit 8.

²⁵ Section 36.3; see also Exhibit 7.

²⁶ Section 36.2.

²⁷ Section 39.3.

Price Index ("CPI").²⁸ However, a single CPI adjustment to the collection component of the Rates shall not exceed four percent (4%) in any year. The "fuel component" of the rates also will be adjusted annually, beginning on October 1, 2016.²⁹ The adjustments to the fuel component of the Rates will be based on changes in the cost of fuel.

Progressive may provide Supplemental Collection Services to a Customer if a Customer requests such service.³⁰ For example, Progressive may collect Bulky Waste or Bulky Yard Waste for a Customer on a day when Collection Service normally is not provided to that Customer. Progressive may charge a separate fee to the Customer for Supplemental Collection Services.³¹

J. Payments to the City

Progressive will pay the City certain fees to offset the costs incurred by the City under the Agreement. Specifically, Progressive will pay: (1) \$10,000 each month to defray the City's costs for the administrative services provided by the City under the Agreement;³² (2) \$5,000 each month to offset the City's cost of enforcing the requirements in the Agreement;³³ (3) \$500,000 in 2015 and an additional \$500,000 in 2016 to offset the costs incurred by the City when terminating the City's use of City personnel and equipment for collection services;³⁴ (4) \$250,000 to reimburse the City for the time and effort spent by the City's Staff, consultants, and attorneys while working on the preparation of the City's RFQ, RFP, and Agreement;³⁵ and (5) \$9,000 dollars each month to rent the City's Equipment Yard.³⁶

²⁸ Section 38.3. For example, Progressive's Rate for collecting Garbage in the City and delivering it to the County's Resources Recovery Facility is \$10.08 per Dwelling Unit per month. This Rate consists of a collection component in the amount of \$8.71 and a fuel component in the amount of \$1.37.

²⁹ Section 38.4.

³⁰ Sections 7.4.

³¹ Sections 38.2.

³² Section 40.1.

³³ Section 40.2.

³⁴ Section 40.4.

³⁵ Section 40.3.

³⁶ Sections 25.1 and 40.7.

K. Payments for Community Benefits

In addition to its other obligations under the Agreement, Progressive must donate at least \$50,000 each year in cash or in-kind services for the benefit of the City and its residents.³⁷ For example, Progressive may donate funds or services to support programs for the City's schools, youth sports, and educational activities.

L. Disposal Fees

The City will continue to be responsible for the payment of the Tipping Fees (disposal fees) for the disposal of the City's Residential Waste.³⁸ These fees will be paid directly to the County if the City continues to use the County's disposal facilities. These fees will be part of the City's payments to Progressive if the City elects to use Progressive's disposal facilities.

M. Complaints

Under the Agreement, Progressive must establish a real-time web-based system for tracking complaints.³⁹ Progressive must enter all complaints into the electronic tracking system within one hour after Progressive receives the complaint. The system must be configured in a manner that allows the City to monitor the complaints from the City's computers.

If Progressive receives a complaint before noon on an Operating Day, Progressive must remedy the complaint before the end of that day.⁴⁰ If Progressive is notified after noon on an Operating Day or anytime on a Sunday or Holiday, Progressive must remedy the complaint before noon on the next Operating Day.

If there is a dispute between a resident and Progressive, the resident may notify the City's Director, who shall resolve the dispute for the parties.⁴¹

³⁷ Section 77.

³⁸ Section 42.

³⁹ Section 31.1.4.

⁴⁰ Sections 16 and 31.1.3.

⁴¹ Section 31.1.2 and 31.2.

In addition to the real-time system for tracking complaints, Progressive must maintain extensive records for the City.⁴² Further, Progressive must submit reports to the City each calendar quarter and each year.⁴³ Among other things, these reports must discuss the complaints received and the actions taken to resolve the complaints.

N. The City's Enforcement Mechanisms

The City has several mechanisms it may use to ensure Progressive's performance under the Agreement. Pursuant to Section 44 of the Agreement, the City may impose and collect administrative charges (i.e., liquidated damages) if Progressive fails to comply with the terms in the Agreement. There are approximately 37 different grounds for imposing administrative charges under the Agreement. These administrative charges are relatively modest in size, because they are not intended to be penalties, but the charges may add up to more sizeable amounts if Progressive fails to satisfy its obligations under the Agreement.⁴⁴

The City may terminate the Agreement if Progressive fails to comply with the material requirements in the Agreement.⁴⁵ If the Agreement is terminated, the City may use Progressive's performance bond to procure and pay for the services of a different waste collection company.⁴⁶ The performance bond initially will be in an amount that is equal to fifty percent (50%) of the total amount of the City's annual payment to Progressive. The performance bond initially will be almost Three Million Dollars (\$3,000,000).

Progressive's performance also is supported by a corporate guarantee from Progressive's parent corporation.⁴⁷ If Progressive is unable or unwilling to perform in compliance with the requirements in the Agreement, the City may require Progressive's parent corporation to satisfy Progressive's obligations.

⁴² Section 34.2.

⁴³ Sections 34.3 and 34.4.

⁴⁴ The administrative charges range from \$25 to \$4,000.

⁴⁵ Section 47.

⁴⁶ Section 53; Exhibit 5 to Agreement.

⁴⁷ Section 54 and Exhibit 4.

O. Insurance and Indemnification for the City

The Agreement requires Progressive to purchase and maintain insurance to protect the City against potential liabilities resulting from Progressive's actions.⁴⁸ For example, Progressive must have insurance policies for Commercial General Liability (\$1 million/\$2 million), Pollution Liability (\$1 million/\$2 million), and Excess Liability (\$10 million/\$10 million). Progressive also must indemnify, hold harmless, and defend the City against claims resulting from Progressive's acts, omissions, or negligence.⁴⁹

P. Disposal Facilities

The City currently delivers the City's waste to the Miami-Dade County Resources Recovery Facility and the Medley Landfill, pursuant to an interlocal agreement with Miami-Dade County. The City's interlocal agreement with Miami-Dade County will expire on October 1, 2015. Thereafter, the City may require Progressive to deliver the City's waste to a different solid waste disposal facility.⁵⁰ If the City wishes to exercise this option, the City must provide written notice to Progressive no later than December 31, 2015.⁵¹

Q. Collections in the Annexed Area

The City has not yet decided whether it will continue to deliver its solid waste to Miami-Dade County's disposal facilities. If the City decides to continue to use the County's facilities, the County will allow Progressive to collect the solid waste generated in the three-square mile area that was annexed into the City in 2004 (the "Annexed Area"). However, under the County Code, the City will need to pay a "disposal facility fee" to the County for the Residential Waste collected by Progressive in the Annexed Area.⁵²

⁴⁸ Section 52.

⁴⁹ Section 51.2.

⁵⁰ Sections 19.5 and 76.

⁵¹ Section 76.

⁵² See Section 15-25.2 of the County Code. The County's fee will be equal to 12.5% of the funds received by Progressive for the collection and disposal of the Residential Waste generated by the homes in the Annexed Area.

If the City decides to have Progressive deliver the City's Residential Waste to a privately-owned disposal facility, the County will not allow Progressive to collect the Solid Waste generated in the Annexed Area. Instead, the County will collect the waste in the Annexed Area. Under such circumstances, the City would not be obligated to pay the disposal facility fee to the County.

R. Term of the Agreement

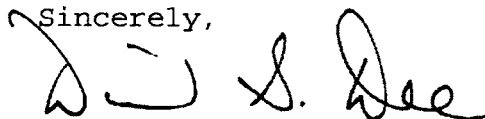
The Agreement will take effect when the Agreement is signed by the City and Progressive.⁵³ The Agreement will remain in effect until September 30, 2023, which is approximately 7.5 years after Progressive starts to provide Automated Collection Service with new vehicles. When the Agreement expires in 2023, the City will have the right to renew the Agreement. The Agreement may be renewed annually for a maximum of five (5) years.

III. CONCLUSION

The Agreement is designed to ensure that the City's residents receive excellent service from Progressive. Initially, the City's residents will receive the same level of service they currently enjoy. The City's residents will receive new Garbage Carts and Automated Collection Service no later than March 28, 2016.

The Agreement contains relatively detailed and comprehensive requirements to help ensure that the City's residents receive the benefits sought by the City. However, it will be up to the City to ensure that the Agreement is enforced in accordance with its terms.

Please feel free to contact me if you have any questions.

Sincerely,


David S. Dee

⁵³ Section 3.

Lorena Bravo
August 4, 2015
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cc: Armando Vidal
David Gregory